

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the First Amended Petition to  
Revoke Probation Against:**

**Benjamin Stuart Wilbur, M.D.**

**Physician's and Surgeon's  
Certificate No. A 92956**

**Respondent.**

**Case No. 800-2019-055423**

**DECISION**

**The attached Proposed Decision is hereby adopted as the Decision  
and Order of the Medical Board of California, Department of Consumer  
Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on March 16, 2023.**

**IT IS SO ORDERED February 14, 2023.**

**MEDICAL BOARD OF CALIFORNIA**



**Richard E. Thorp, M.D., Chair  
Panel B**

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the First Amended Petition to Revoke  
Probation Against:**

**BENJAMIN STUART WILBUR, M.D., Respondent.**

**Agency Case No. 800-2019-055423**

**OAH No. 2022030116**

**PROPOSED DECISION**

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 10 through 13, 2022.

Wendy Widlus, Deputy Attorney General, represented Petitioner William Prasifka, Executive Director of the Medical Board of California (Board). (Petitioner is referred to as "Complainant" in the First Amended Petition to Revoke Probation.) Respondent Benjamin Stuart Wilbur, M.D., appeared and was represented by Albert J. Garcia, attorney at law.

Oral and documentary evidence was received. The record was held open until October 21, 2022, so that Petitioner could file an updated costs claim.

Petitioner submitted two documents related to costs: the Declaration of Ms. Widlus, and Cost of Suit Summary, which are received as exhibits 30 and 31, respectively. The record closed and the matter was submitted for decision on October 21, 2022.

In the course of preparing this Proposed Decision, the ALJ determined that documents pertaining to a default decision against Respondent and a subsequent Writ of Mandate issued by the Superior Court should be made part of the record. The ALJ then ordered the record reopened so that Respondent could submit such documents; the Order Reopening Record was issued on November 10, 2011, reopening the record through November 28, 2022.

Petitioner filed a response on November 15, 2022. Respondent filed responsive documents on November 18, 2022, and an Amended Response on November 21, 2022. Petitioner's response is received as Exhibit 32, and Respondent's Amended Response will be received as Exhibit Z-9.

There being no objections or other responses, the record again closed and the matter was again deemed submitted for decision on November 28, 2022.

The ALJ hereby makes his factual findings, legal conclusions, and order.

## **SUMMARY OF THE CASE**

Respondent's license was placed on probation in August 2017 pursuant to a stipulation and order that resolved a First Amended Accusation against Respondent. In the stipulation, Respondent admitted convictions of two crimes, one involving felony possession of controlled substances.

In September 2019, a Petition to Revoke Probation was filed against Respondent, and the Board issued a default order of revocation effective July 30, 2020. Respondent obtained relief in the Superior Court, which ordered that the default be set aside. The case was submitted to OAH for hearing. Petitioner later amended the Petition to Revoke, asserting eight claims against Respondent.

Petitioner has established major and minor violations of the probation term requiring drug testing for Respondent. He also established that Respondent has not practiced medicine for a period exceeding two years, a violation of probation.

Under the circumstances, public protection requires the revocation of Respondent's license.

## **FACTUAL FINDINGS**

### **The Parties and Jurisdiction**

1. Petitioner's predecessor filed and maintained the Petition to Revoke Probation (Petition), and Petitioner filed and maintained the First Amended Petition to Revoke Probation (First Amended Petition). Both Petitioner and his predecessor, Kimberly Kirchmeyer, were acting in their official capacities as Executive Officer of the Board.

2. Respondent holds Physician's and Surgeon's Certificate number A 92956, first issued by the Board on September 30, 2005. It was in effect at all times relevant to this matter, with the exception that it was in revoked status for approximately 20 months, following a default decision by the Board on the original Petition, which default was later set aside. (The period of revocation is further discussed below.) Since

September 8, 2017, to the present, the Certificate has been subject to probation. Respondent's Certificate will expire on May 31, 2023, unless renewed.

3. Condition 25 of the order that placed Respondent's Certificate on probation provides that if Respondent violates his probation, the Board, after giving Respondent notice and an opportunity to be heard, may revoke his probation and impose the underlying disciplinary order, which in this case would be revocation of Respondent's Certificate.

4. Thereafter, the First Amended Petition to Revoke Probation was filed. Respondent is deemed to have controverted its claims, pursuant to Government Code section 11507.

5. All jurisdictional requirements have been met.

### **Procedural History of the Action to Revoke Probation**

6. The Petition was filed against Respondent on September 6, 2019. The Petition asserted two grounds for revocation. First, that Respondent violated Probation Term number 8, which mandated random biological fluid testing, by Respondent's alleged failure to call into the testing system to see if a test was required, and further failing to test when selected to do so. The second ground alleged as cause for revocation of probation was the failure to pay monitoring costs as required by Probation Term 27.

7. The Board took a default against Respondent and revoked his license by a Default Decision and Order that issued on June 30, 2020, effective July 30, 2020.

8. Respondent sought relief by a Petition for an Administrative Writ of Mandate in the Superior Court, County of San Francisco. He asserted he did not

receive the Petition to Revoke Probation, and that while he had some later notice from the Board, his probation monitor did not know of the Petition, and in the meantime Respondent had been complying with probation, including completing the PACE program, and paying the monitoring costs asserted as a cause for revocation of probation. On December 10, 2021, the Superior Court issued an order granting Respondent's Petition for an Administrative Writ of Mandate, ordering the Board to set aside its default decision, and to remand the matter for a hearing on the merits of the Petition. While the order granting the petition for writ of mandate was submitted as part of the responses to the Order Re-Opening Record, the writ itself, any judgement issued by the court, or a return on the writ were not submitted by either party.

9. Petitioner then filed the Petition with OAH on March 3, 2022, requesting that a hearing be set on the matter. Respondent's Notice of Defense, dated February 17, 2022 was filed with OAH along with the Petition to Revoke Probation. A prehearing conference was held on August 26, 2022, at which time Petitioner's attorney gave notice she intended to amend the Petition to Revoke. Although filed after the deadline to do so, the First Amended Petition was filed with OAH on September 22, 2022. Respondent's motion to strike the First Amended Petition was later denied.

## **The Underlying Causes for Discipline and the Imposition of Probation**

### **THE STIPULATED DECISION AND ORDER**

10. On August 11, 2017, the Board issued a Decision and Order that resolved the underlying disciplinary action against Respondent. The Decision and Order was based on a stipulation between Respondent and Petitioner's predecessor as Executive Director of the Board (Stipulation). The Decision and Order resolved the case *In the Matter of the First Amended Accusation Against Benjamin Stuart Wilber, M.D.*, case

number 800-2015-016182, OAH No. 2016061186. The Decision was effective September 8, 2017.

11. In the Stipulation, Respondent admitted to the truth of "each and every charge and allegation in First Amended Accusation No. 800-2015-016182." (Ex. 1, p. A21.) This included an admission the Board had issued an Interim Suspension Order against him on April 1, 2016. Respondent agreed his Certificate was subject to discipline, and he agreed to be bound by the probationary terms as set out in the Decision and Order.

## **THE ADMITTED ALLEGATIONS OF THE FIRST AMENDED ACCUSATION AGAINST RESPONDENT**

### **The Five Causes for Discipline**

12. The core of the First Amended Accusation (FAA) alleged Respondent had engaged in drug-related crimes, the drugs being controlled substances, and he was also convicted of a crime involving dishonesty. The facts and circumstances of Respondent's crimes were alleged as well. Based on such facts, five causes for disciplinary action were alleged against him.

13. (A) By his stipulation, Respondent admitted he had violated Business and Professions Code section 2239, in that he had used, prescribed, or administered to himself controlled substances or alcoholic beverages to the extent or in a manner to be dangerous to himself or others. (Further statutory citations are to the Business and Professions Code unless otherwise noted.)

13. (B) Respondent admitted he violated Code sections 490 and 2236 because he was convicted of crimes substantially related to the duties, qualifications,

and functions of a physician and surgeon. The crimes are described in more detail below.

13. (C) Respondent admitted he violated Code section 2238, and Health and Safety Code sections 11170 and 11370.1, in that he administered a controlled substance to himself and possessed a controlled substance while armed with a gun.

13. (D) Respondent admitted his Certificate was subject to discipline pursuant to Code section 822, because his ability to practice medicine safely was impaired because he was mentally or physically ill in a manner effecting competency.

13. (E) Respondent admitted his Certificate was subject to discipline under Code section 2234, for general unprofessional conduct.

### **Respondent's Criminal Convictions**

14. (A) By the Stipulation, Respondent acknowledged he was convicted in the Superior Court of California, County of San Bernardino, on January 13, 2016, of one count of violating Health and Safety Code section 11370.1, subdivision (a), unlawful possession of a controlled substance while in possession of a loaded operable firearm. The conviction was based on Respondent's nolo contendere plea, and he was thereby convicted of a felony. Three other drug-related charges in that case were dismissed, as were two charges alleged in another criminal case.

14. (B) The court sentenced Respondent to serve 279 days in county jail and placed him on three years' formal probation. Among the probation terms were requirements Respondent report to a rehabilitation center, attend Alcoholics Anonymous (AA) meetings as directed by his probation officer, and not possess a firearm.



14. (C) During the criminal proceedings, the Superior Court barred Respondent from practicing medicine during the pendency of the criminal proceedings, pursuant to Penal Code section 23. That order was made on or about October 21, 2015.

15. (A) On May 18, 2016, in the Superior Court of California, County of Riverside, Respondent was convicted of violating Vehicle Code section 10851, subdivision (a), theft and unlawful driving or taking a vehicle. The conviction was based on Respondent's guilty plea, and he was thereby convicted of a misdemeanor.

15. (B) The court placed Respondent on three years informal probation and ordered him to pay fines and restitution.

### **Other Admitted Factual Allegations of the FAA**

16. (A) The facts underlying the conviction for possession of a controlled substance along with a loaded and operable firearm took up approximately two pages in the FAA. The detailed factual claims make lamentable reading (as do the allegations pertaining to the vehicle theft) and will be summarized here.

16. (B) Respondent was arrested on August 7, 2015, after Upland Police Officers searched his vehicle. They found a baggie containing methamphetamine; a loaded .357 Ruger pistol (inferably a .357 magnum, a high-powered weapon) with a speed loader and additional hollow point cartridges; two bags of marijuana; 16 empty baggies, and two digital scales. Respondent admitted to using methamphetamine and sometimes giving it to others.

16. (C) Respondent was again arrested, on October 13, 2015, the day of his first court appearance in the case stemming from his arrest in Upland. Fontana Police

Department officers arrested a man in Ontario near a motel, after the man, identified by the initials M.S., was seen leaving that motel. M.S. was found in possession of six ounces of methamphetamine, over 100 oxycodone pills, and a loaded firearm. He allowed police to search his motel room. They contacted Respondent there, who said he was living in the room though M.S. had rented it. A search of that part of the motel room controlled by Respondent turned up a 50 ml. vial of Marcaine and five vials of Lidocaine, 10 mg. each. A prescription bottle with 106 oxycodone pills, 30 mg., was found; the patient's name on the bottle was M.S. The police also found a 10 ml. vial of a blend of anabolic steroids. They found paperwork indicating Respondent had been selling drugs.

16 (D) Respondent made numerous incriminating statements to the Fontana police officers. He said M.S. was both a patient and a friend, whom he had treated for chronic pain with oxycodone and Norco. Respondent was staying with M.S. because he had nowhere else to go. Respondent admitted he did not have the steroids legally, and that he had bartered a consultation and prescription for pain medications to someone for the steroids. He described how he "consulted" with ostensible patients, charging anywhere from \$150 to \$300 dollars, the higher fee for initial consultations or for those patients in chronic pain. He admitted he wrote prescriptions for pain medications to people who he did not examine physically.

16. (E) The officers who interviewed Respondent perceived he was under the influence of narcotics; their description of his behavior supports their perceptions. Respondent admitted using methamphetamine and marijuana. He claimed to have a medical marijuana recommendation but could not produce evidence of it.

17. The facts underlying Respondent's second conviction arise from his rental of a car from Budget Auto Rental (Budget) in July 2015. Respondent failed to return

the car to Budget when it was due back on July 15, 2015. On September 24, 2015, police officers located the car in the parking lot of the courthouse in Rancho Cucamonga. When contacted by the officers, Respondent first claimed he thought his credit card would cover further rental charges after the due date. Respondent admitted he received letters from Budget that he did not open and he also stated he was living out of the car and hotels due to his recent arrest and pending divorce. He admitted using methamphetamine and allowed as he might have cancelled the credit card he used when he rented the car from Budget.

### **Terms and Conditions of Respondent's Probation**

18. The terms and conditions of license probation imposed on Respondent were typical for cases involving a physician with drug or alcohol problems, and they were stringent. The probation terms were in the Board's standard language, and the terms are not repeated in their entirety here, though some parts pertinent to this proceeding are quoted. In summary, the probation order required the following:

**Term No. 1, Actual Suspension:** Respondent was suspended from the practice of medicine for one year from the effective date of the Decision and Order, from September 8, 2017, to September 9, 2018.

**Term No. 2, Clinical Competence Assessment Program:** Respondent was to enroll in a clinical competency program within 180 days of the effective date of the Decision and Order, and he was to successfully complete the program within 180 days of enrollment, unless the Board gave a written extension of time. Essentially, this required Respondent to enroll in and pass the Physician Competency Assessment Program conducted at the University of California, San Diego Medical School's PACE Program. (PACE stands for Physician Assessment and Clinical Education; this clinical

competency program will be referred to as PACE hereafter.) Further, upon completion of PACE, Respondent was obligated to enroll in a professional enhancement program (PEP), which would include quarterly chart review, practice assessment, and review of professional growth and education.

Term No. 2 spelled out other details of the obligation to complete a clinical competency or PACE program, and what the program would entail. Relevant to this proceeding was the proviso that the program would submit a report to the Board that stated whether Respondent had demonstrated that he could practice safely, and the report was to advise the Board of any recommendations for the scope and length of any additional education, clinical training, or treatment for Respondent, or anything else affecting Respondent's practice of medicine. The probation term stated "Respondent shall comply with the program's recommendations." (Ex. 1, p. A23, line [L] 20.)

If Respondent failed to enroll in, participate in, or complete the competency program, he was to receive a notice to cease practice until the outstanding portions of the competence program were completed. The last paragraph of Term No. 2 stated: "Respondent must successfully complete the clinical competence assessment program prior to resuming the practice of medicine." (Ex. 1, p. A24. L's 11-12.)

**Term No. 3, Controlled Substances, Total Restriction:** Respondent was barred from ordering, dispensing, prescribing, furnishing or possessing any controlled substances. He was also barred from recommending medical marijuana for patients.

**Term No. 4, Controlled Substances, Surrender of DEA Permit:** Respondent was forbidden to practice medicine until he provided proof to the Board that his Drug

Enforcement Administration (DEA) permit had been surrendered to the DEA "for cancellation." (Ex 1, p. A25, L 9.) He was barred from reapplying for a new DEA permit without the prior written consent of the Board.

**Term No. 5, Clinical Diagnostic Evaluations and Reports:** Within 30 days of the effective date of the Order and Decision, and on a periodic basis as might be required by the Board, Respondent was to undergo a clinical diagnostic evaluation by a physician and surgeon in good standing, who had at least three years' experience in providing evaluations of doctors with substance abuse disorders. The evaluator was to report on Respondent's fitness to practice and was to make any recommendations he or she deemed pertinent to safe practice by Respondent. Thereafter, the Board would notify Respondent if it deemed him fit to practice. Respondent was not to practice until given notice by the Board that he was fit to practice.

Under Term No. 5, Respondent was to be fluid tested at least two times per week while awaiting the Board's notice he could practice, and he was obligated to comply with any of the restrictions or conditions recommended by the evaluator.

**Term No. 6, Controlled Substances, Abstain from Use:** Respondent was required to completely abstain from the use or possession of controlled substances, unless lawfully prescribed by another practitioner for a bona fide illness or condition. If he was prescribed such drugs by another practitioner, he was obligated to notify the Board within 15 days, providing the practitioner's name and address, the type and quantity of the medication, and the identity of the issuing pharmacy.

**Term No. 7, Alcohol, Abstain from Use:** Respondent was required to completely abstain from alcohol use.

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**Term No. 8, Biological Fluid Testing:** Respondent was obligated to submit to random biological fluid testing, at his own expense, which testing was defined to include urine, blood, breathalyzer, or hair testing, at a firm approved by the Board. Respondent was required to make daily contact with the Board or its designee (in practice, the third-party testing firm), to determine if testing was required on that date. He could be ordered to test on any day, including on weekends and holidays. During the first year he would be required to test between 52 and 104 times.

Various requirements for testing were stated in Term No. 8, pertaining to the mechanics of the testing program, such as specimen collection requirements, certification requirements, or timelines.

Term No. 8 provided that "prior to changing testing locations for any reason, including during vacation or other travel, alternative locations must be approved by the Board and meet [enumerated requirements]." (Ex. 1, p. A29, L's 20-21.)

**Term No. 9, Worksite Monitor for Substance-Abusing Licensee:** At his own expense, Respondent was to obtain a person who would monitor him at work for signs of drug or alcohol abuse. That monitor would be obligated to make reports to the Board of any suspected abuse, as well as a monthly report.

**Term No. 10, Substance Abuse Support Group Meetings:** Respondent was obligated to locate a substance abuse support group and participate in weekly meetings. This term set out qualifications for the support group's facilitator.

**Term No. 11, Notice of Employer or Supervisor Information:** Respondent was required to provide information to the Board pertaining to his employers and supervisors, and consent to the Board's communication with such persons.

**Term No. 12, Violation of the Probation Condition for Substance-Abusing Licensees:** This term spelled out what action the Board would take in the event of either major or minor violations of probation as defined in California Code or Regulations, title 16 (CCR), section 1361.52, subdivision (a), and related regulations.

**Term No. 13, Professionalism Program (Ethics Course):** Respondent was required to enroll in a professionalism program that met specified regulatory requirements within 60 days of the effective date of the Decision and Order, and to successfully complete the classroom part of the program within six months of enrollment, and the longitudinal part of the program within one year of attending the classroom component. He was to provide certification of completion within 15 days of completion.

**Term No. 14, Psychotherapy:** Respondent was required to undergo psychotherapy with a Board-approved professional, the therapist needing significant experience in treating patients with emotional and mental disorders. Respondent was responsible for having the therapist submit quarterly reports to the Board. The Board could order Respondent evaluated by a psychiatrist of its choosing, and the Board could extend probation if, prior to the end of probation, Respondent was found mentally unfit to practice without restrictions, the Board could extend probation.

**Term No. 15, Solo Practice Prohibition:** Petitioner was not to engage in solo medical practice. Failure to establish a practice within 60 days of the effective date of the Decision and Order was to lead to a letter to cease practice, until an appropriate practice setting was established.

**Term No. 16, Education Course:** Within 60 days of the effective date of the Decision and Order, and thereafter on a yearly basis, Respondent was to submit for

approval a plan for further professional education of 20 hours per year in excess of the regular Continuing Medical Education (CME) requirement. This Term states, "Respondent shall provide proof of 65 hours of CME of which 20 hours were in satisfaction of this condition." (Ex. 1, p. A37, L's 3-4.)

**Term No. 17, Notification:** Within one week of the effective date of the Decision, Respondent was required to disclose the Decision and Order to the Chief of Staff or Chief Executive at any hospital where he had privileges. He was required to give such notice to his malpractice insurance carrier.

**Term No. 18, Supervision of Physician Assistants and Advanced Practice Nurses:** Respondent was barred, during probation, from supervising physician assistants and advanced practice nurses.

**Term No. 19, Obey All Laws:** Respondent was enjoined to obey all federal, state, and laws, rules governing the practice of medicine, and to comply with all criminal probation requirements.

**Term No. 20, Quarterly Declarations:** Respondent was required to make quarterly reports to the Board.

**Term No. 21, General Probation Requirements:** Term number 21 set forth several general probation requirements, such as complying with the probation unit, keeping the Board apprised of Respondent's address and place of practice, and to promptly renew his license. Further, he was required to notify the Board if he was going to leave California for more than 30 days, or if he was going to move from California, or practice in another state.

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**Term No. 22, Interview with the Board or its Designee:** Respondent was obligated to submit to in-person interviews upon request by the Board.

**Term No. 23, Non-Practice While on Probation:** This term provided Respondent would notify the Board in writing of any period of non-practice lasting more than 30 calendar days; practice was defined by reference to Code sections 2051 and 2052, and other definitions. Term No. 23 stated that a "Board-ordered suspension of practice would not be considered as a period of non-practice." (Ex. 1, p. A39, L's 7-8.) Term No. 23 further provided that a period of non-practice exceeding 18 months would obligate him to complete the Federation of State Medical Board's Special Purpose Examination, known as the "SPEX" exam, or in the Board's discretion a clinical competence program. Term No. 23 also provided that "Respondent's period of non-practice while on probation shall not exceed two (2) years." (Ex. 1, p. A39.)

**Term No. 24, Completion of Probation:** This term provided Respondent was to complete all financial obligations not later than 120 days prior to completion of probation, and that upon completion, his Certificate would be restored.

**Term No. 25, Violation of Probation:** This term stated that failure to comply with any term of probation was a violation of probation, and if there was a violation, the Board could revoke probation and carry out the original disciplinary order; Respondent was to be given notice and an opportunity to be heard prior to any order issuing. Further, if an accusation, petition to revoke, or interim suspension order was issued against Respondent, that would extend the period of probation, and the Board would have continuing jurisdiction until the matters were final.

**Term No. 26, License Surrender:** Term number 26 provides that Respondent could request to surrender his license, and the Board had discretion as to whether to

grant the request or take other action. The consequences of an accepted surrender were set out as well.

**Term No. 27, Probation Monitoring Costs:** Respondent was obligated to pay probation monitoring costs to the Board, no later than January 31 of each calendar year.

### **Summary of the Alleged Violations of Probation**

19. Petitioner alleged eight causes to revoke probation, as follows:

#### **First Cause for Revocation, alleged violation of Term No. 8:**

Respondent allegedly failed to check-in with the testing laboratory on 23 days between October 31, 2017 and August 27, 2022. It is further alleged that the person monitoring his performance for the Board wrote letters to Respondent requiring him to explain in writing why he failed to check-in, and it is alleged Respondent failed to do so. Petitioner alleges several non-compliance letters were sent to Respondent. Further, three major violations of Term No. 8 are alleged, as it is claimed Respondent failed to submit to testing on three occasions, two in late 2017, and one in February 2019.

#### **Second Cause for Revocation, alleged violation of Terms No. 19 and**

**25:** It is alleged the Board issued a citation to Respondent in March 28, 2022, for failing to check in with the testing laboratory in February and March of that year, and further that Respondent failed to pay the citation fine in a timely manner.

**Third Cause for Revocation, alleged violation of Term No. 4:** It is alleged Respondent failed to surrender his DEA permit.

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**Fourth Cause for Revocation, alleged violation of Term No. 23:**

Respondent allegedly failed to practice medicine for more than 21 months, which obligated him to take the SPEX examination and/or to again participate in the PACE program. It is claimed Respondent had done neither, in violation of probation.

**Fifth Cause for Revocation, alleged violation of Term No. 23:**

Respondent allegedly had a period of non-practice in excess of two years, placing him in violation of Term No. 23.

**Sixth Cause for Revocation, alleged violation of Term No. 2:** It was alleged the PACE evaluation report recommended Respondent take a professionalism (ethics) course, which obligated Respondent to do so. While the Board's designee acknowledged Respondent had taken and passed that course before he was evaluated by PACE, it was asserted he had to take it again, and that his failure to do so was a violation of Term number 2.

**Seventh Cause for Revocation, alleged violation of Term No. 2:** It was alleged the PACE evaluation report recommended Respondent be required to demonstrate participation in a 12-step program, and that Respondent failed to provide proof of such participation.

**Eighth Cause for Revocation, alleged violation of Terms 2 and 23:** It was alleged Respondent failed to comply with various recommendations by the PACE program in its report, in violation of Terms 2 and 23.

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## **First Cause for Revocation, Alleged Violation of Term No. 8, Biological Fluid Testing**

20. The biological fluid testing requirement obligates Respondent to check into the testing system on a daily basis to see if he needs to go to a test collection site to be tested. Most days, he would not be required to test, but would be required to do so at least two times per month during the first year of probation; the testing requirement would be allocated randomly.

21. On August 17, 201, Virginia Gerard, a Board employee who monitored compliance with biological fluid testing wrote Respondent. She provided information about the program, including that the Board's approved testing lab was FirstSource Solutions. She informed Respondent that he had to check in every day between 12:00 a.m. and 5:00 p.m., and when tested, it would have to be observed, at a site approved by the lab. She provided information about how Respondent might have a lab approved by FirstSource Solutions, which could make testing more convenient for Respondent. Ms. Gerard cautioned Respondent that it was his obligation to test on the day when notified. She warned Respondent that if he travelled, he would have to ensure there was a testing site available at or near his destination, and she told him that while the lab could assist him in finding a collection site, they requested he provide the lab with two weeks' notice before travelling. Respondent was informed there are no collection sites outside the country that contracted with the lab. (Ex. 3.)

22. Although the testing records indicate Respondent missed seven tests, testimony from the Board's monitor established that four tests shown as missed in 2020, were not missed tests, because during the Pandemic, probationers such as Respondent were allowed an additional period of time to complete biological fluid

tests; same day testing was waived for a time because the pandemic affected the ability of collection facilities to operate, in part due to staffing shortages.

23. Respondent missed tests on October 31, 2017, November 26, 2017, and February 13, 2019.

24. Respondent missed check ins on October 31 and November 11, 2017. In 2018 he failed to check in to the system on five days: May 3 and 22; September 24; October 9; and, November 4. In 2019 he failed to check in on nine days: January 25; February 2; March 23; May 14; June 10; October 19; November 2; December 9 and 27. In 2020, Respondent did not check in on seven days: January 1 and 23; May 1; July 21 and 25; and August 19. Respondent failed to check in on three days in 2022: February 18; March 1; and August 27. This totals 26 times that Respondent did not check in. However, the failure to check in on August 19, 2020, should not count against him, as this was during the time that his Certificate was revoked, and he was not then on probation, thus reducing the number of failures to contact the testing service to 25 over a period of approximately five years.

25. The failure to test when required was a major violation of probation, and thus Respondent had three major violations of the biological fluid testing requirements. Each failure to call in to the testing system amounted to a minor violation, and thus Respondent had 25 minor violations.

26. Regarding the three missed tests, Board probation monitors required Respondent to explain the reasons for the missed tests. Although Respondent failed to respond to some requests for explanations as to why he did not call in to the testing lab, he did provide a response when questioned as to why he did not test when required to do so.

27. On November 7, 2017, Respondent wrote to Elena Contreras, a Biological Fluid Testing analyst (BFT analyst) for the Board, in response to her request to explain why he failed to test on October 31, 2017. He generally explained he got caught up in the Halloween activities and other matters. He pointed to tests conducted on October 28 and November 2, 2017, as indicia of his intent to comply with testing requirements. (Ex. Z-3.) His testimony on this matter was consistent with his written statement.

28. On December 9, 2017, Respondent again wrote Ms. Contreras, responding to her request to explain why he did not test on November 26, 2017, when he was chosen to do so. He explained he was then in Sequim, Washington, and that the 26th was a Sunday. He tried to contact First Source, to locate a collection center, but they were not open. He contacted numerous labs, but none could help him. Respondent's testimony was consistent with his sworn statement to Ms. Contreras.

29. Respondent had not followed the written instructions provided by the Board, to the effect that he had to arrange for testing if he travelled out of the state, and that such arrangements should be made 14 days in advance.

30. Respondent missed the test scheduled for February 13, 2019. Jennifer Saucedo, the current BFT analyst, wrote to him on February 26, 2019, regarding the missed test. Respondent responded to her on February 28, 2019. He provided evidence he had taken a test on February 14, 2019, the test being a hair test. He did not really explain why he did not test on February 13, as required. It is mitigating that the test he was scheduled to take, and belatedly took, was a hair test, which can detect illicit substances ingested for many days prior to the hair test.

31. It was established, as alleged, that on three occasions a BFT analyst wrote to Respondent after he missed calling in, requiring him to explain in writing and under

oath, why he failed to call in, and that he failed to respond as requested. On June 12, 2019, he was contacted and notified that he had failed to call in to the testing system on May 14, 2019 and June 10, 2019. On October 31, 2019, the BFT analyst wrote Respondent and directed him to provide a statement as to why he did not call in on October 19, 2019. Further, on December 27, 2019, the BFT analyst wrote Respondent to notify him that he failed to check in on December 9, 2019. There is no evidence Respondent made written responses to these requests.

32. The BFT analysts sent Non-Compliance Letters to Respondent on several occasions, giving him notice of his failures to check in for testing. Such letters were sent to Respondent on April 2, May 27, and July 30, 2020; and February 23 and August 29, 2022.

33. Respondent voluntarily drug tested from January 27, 2017 through September 6, 2017, before the effective date of the Decision and Order, and from August 21, 2020 through February 14, 2022, the time during which his license was revoked by the default decision. (Ex. S.)

34. Between September 9, 2017 and September 18, 2022, Respondent was tested through the Board's program 201 times, and all test results were negative. (Ex. V.) Petitioner's counsel acknowledged there is no evidence Respondent ever tested positive.

### **Second Cause for Revocation, Alleged Violation of Term No. 19:**

35. It was established, as alleged, that the Board issued a citation order to Respondent, imposing a fine for his violations of Term number 8 by failing to check in to the biological testing system when required to do so and it is alleged he did not pay the fine when it was due.

36. Respondent appealed the citation order and requested an informal conference to address the matter. However, after the informal conference the Board upheld the citation, imposing a fine of \$1,400. In the May 13, 2022 letter giving notice that the citation order had been upheld, Respondent was given the option of seeking an administrative hearing on the citation order or he could pay the fine.

37. Respondent did not appeal the citation order. He did not pay the fine before the due date. However, when the Board reminded him of the fine, he made arrangements for a payment plan, and he testified he was current on the plan as of the hearing.

**Third Cause for Revocation, Violation of Term No. 4, Alleged Failure to Surrender DEA Permit:**

38. By Term no. 4, Respondent was barred from practicing until he surrendered his DEA permit to the Drug Enforcement Administration for cancellation.

39. During his first meeting with probation monitors, in September 2017, Respondent told them he no longer had a DEA permit, and that it had expired. When he later changed probation monitors, he communicated that to Mr. Onu, his second probation monitor. There is no evidence that the probation monitors raised the issue of surrendering the permit until approximately February 2022.

40. On March 20, 2019, Respondent wrote to Onu, then his probation monitor. He stated he had spoken to an investigator with the DEA about the process of reapplying for a DEA permit. He was told the Board would have to give permission to reapply, and that the DEA would take steps to block the renewal application. Respondent further stated that the investigator told him that the DEA certificate was cancelled as of August 2015 when his license was suspended, and Respondent stated



to Onu that Respondent had no paper certificate or controlled substance order forms to surrender. He pointed out to Mr. Onu that the sooner he could reapply for a DEA permit, the better, as he would need one to practice in the area of primary care. (Ex. Z-7.)

41. On February 11, 2022, Respondent met with his current probation monitor, Sandra Borja, a Staff Services Manager I. She had been present during Respondent's first meeting with probation in September 2017, when he explained he did not have a DEA permit.

42. During the February 11, 2022 meeting, Borja raised the issue of the DEA permit. According to a letter from Borja to Respondent dated February 14, 2022 and denominated as a "Follow-Up Letter" (Ex. 17, p. A236), Borja recounted that she told Respondent he needed to contact the DEA and complete a form 104, apparently the vehicle used to surrender a DEA permit. She then instructed Respondent to obtain an email confirmation from the DEA that the permit had been surrendered, and to copy her on it that confirmation. Borja requested Respondent complete this task by March 11, 2022.

43. On March 17, 2022, Respondent's attorney, Mr. Garcia, wrote Borja regarding the issue of the DEA permit. (Ex. 15.) He took the position that Respondent had provided evidence to Borja that Respondent did not have an active permit, and had not since September 14, 2016. He recounted that Borja was at the meeting on September 7, 2017, when Respondent informed his monitor and Borja he did not have a valid permit. Mr. Garcia noted that the issue had not been raised, even in the original Petition to Revoke Probation, until Borja took the matter up in February 2022.

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44. Despite the position taken by Respondent and Mr. Garcia, Borja continued to require cancellation of the DEA permit at later quarterly meetings and in the follow-up letters she sent after those meetings in May and August 2022. In her follow-up letter dated August 1, 2022, Borja noted that Respondent had copied her on an email he had sent to the DEA explaining he needed to surrender his permit, but as of the meeting date (July 29, 2022) he had not received a response. (Ex. 19, p. A243.)

45. The record does not establish that Respondent has surrendered his DEA permit to the DEA, but it is clear that he does not have a valid permit and has not for several years.

### **The Fourth and Fifth Causes for Revocation, Alleged Violation of Term 23 by Failure to Practice in Excess of Two Years:**

#### **THE BASES OF THE TWO CLAIMS**

46. The Fourth and Fifth Causes to Revoke Probation have as their bases a common claim, that Respondent failed to practice medicine for at least 18 months, in violation of Probation Term 23. The Fourth Cause for Revocation asserts that after it was determined that Respondent had not practiced in excess of 18 months, he was ordered to retake the PACE program and the SPEX exam, and he did not do so. The Fifth Cause for Revocation asserts that Respondent failed to practice in excess of two years, which is a violation of Term 23; it places a cap on the period of non-practice that may be allowed. Determination of these claims turns in part on calculating periods where Respondent was barred from practice, as Term 23 provides, in part, that a "Board-ordered suspension of practice would not be considered as a period of non-practice." (Ex. 1, p. A39, L's 7-8.) It is fair to treat the period when Respondent's license was revoked by the default as a period of suspension.

## **CALCULATION OF THE FIRST PERIOD OF PRACTICE ELIGIBILITY**

47. There were three periods of suspension relevant to this matter. The first was the one-year suspension imposed at the outset of probation. The second was a suspension pursuant to the Family Code, because Respondent was in arrears on child support. The third was the period of revocation, which overlapped (in part) the period of suspension for support delinquency. There were periods when Respondent was eligible to practice, which can be determined from an examination of when he was not eligible due to suspension or the revocation.

48. Effective May 30, 2020, Respondent's Certificate was suspended pursuant to Family Code section 17520, for failure to comply with a child support order. (Ex. 28.) Respondent obtained a "release" from the child support agency effective December 27, 2021, ending the suspension mandated by the Family Code. While the notice of the suspension was issued by the Department of Consumer Affairs, Family Code section 17520 makes it clear that the licensing agency—here the Board—must suspend the license upon notice of the support delinquency, if the party does not cure the delinquency within 150 days.

49. Respondent's probation-imposed suspension ended, and he was free to practice again on September 9, 2018, and until the suspension under the Family Code became effective on May 30, 2020. This period of eligibility encompasses three months and 21 days in 2018; all 12 months in 2019, and five months in 2020, for a total of 20 months and 21 days between the end of the first suspension term and the beginning of the period of suspension for child support delinquency.

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## **CALCULATION OF THE SECOND PERIOD OF ELIGIBILITY**

50. Calculation of the second period of practice eligibility turns on a determination of when the Superior Court order setting aside the default decision came into effect.

51. During the hearing, it was asserted that the date of the Superior Court's order granting the writ of mandate, December 10, 2021, was the revival of Respondent's ability to practice medicine. That contention cannot be sustained. The Court's order stated that a writ would issue to the Board, but the issuance date is not disclosed in the record, nor is the date of any judgement or return on the writ. Further, the child support arrears suspension was effective until December 27, 2021.

52. In the First Amended Petition to revoke probation, Petitioner alleged that Respondent applied to have his Certificate renewed on December 30, 2021, and Petitioner further alleged the Board granted the application on February 13, 2022, placing Respondent back on probation. (Ex. 1, p. A103, ¶ 16.) That date is the appropriate one for measuring eligibility to practice when determining what, if any, period of non-practice followed the period of revocation.

53. Between February 13, 2022, and the end of the hearing, October 13, 2022, Respondent did not practice medicine. That encompasses a period of eight months. Respondent passed the two-year mark on May 22, 2022; the nine days from February 13 through February 22 is added to the first period of eligibility, making 21 months; the three months from February 22 to May 22 when added bring the total of 24 months as of May 22, 2022.

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54. Respondent has not practiced since he was placed on probation. He has a period of non-practice, through the last date of the hearing, totaling 28 months and 21 days.

55. There is no evidence Respondent ever gave the Board written notice that he had not practiced for a period of 30 days or more, as required by Term 23. By March 9, 2020, he was obligated to take the SPEX exam, because he had not practiced in the 18 months after his initial suspension lifted. And, by March 9, 2020, the Board had discretion to order him to retake PACE. In any event, Respondent is in violation of Term 23 by not practicing for a period exceeding two years.

### **THE DIRECTIVE TO TAKE SPEX OR PACE**

56. Probation Term 23 provides that if a period of non-practice exceeds 18 months, Respondent shall successfully complete the SPEX examination, or in the Board's discretion a clinical competency program, in this case the PACE program. Respondent had completed the PACE program on November 1, 2019.

57. In a quarterly meeting between Respondent and Borja on February 11, 2022, Borja pointed out that Respondent had been in a non-practice status during his probation. In her letter following up the quarterly meeting that took place on May 27, 2022, Borja discussed the non-practice time, stating Respondent had reached 18 months of non-practice on March 8, 2022, and she directed Respondent to sign up for SPEX or PACE by May 31, 2022. She reiterated this in the July 29, 2022 quarterly meeting and the follow-up letter to that meeting dated August 1, 2022. On August 25, 2022, Borja wrote a "non-practice letter" to Respondent that asserted his period of non-practice had exceeded two years as of January 11, 2022, and he was required to

cease practicing medicine. Plainly the January 11, 2022 date was incorrect, but as found above, Respondent did pass the two-year mark on May 22, 2022.

58. As of the end of the hearing, Respondent had not signed up for SPEX or PACE. His position is that he has already taken and passed the PACE program, and he disputed the length of the period of non-practice.

### **The Sixth, Seventh, and Eighth Causes for Revocation, Alleged Failures to Comply With Term No. 2, by Failing to Complete PACE-Recommended Tasks**

#### **THE BASES FOR THE SIXTH, SEVENTH AND EIGHTH CAUSES FOR REVOCATION**

59. As noted in the summary of Term no. 2, set forth in Factual Finding 18, Respondent was to complete the PACE program, and he was obligated to comply with the program's recommendations.

60. The PACE report forwarded to the Board had several recommendations. One of the recommendations was for Respondent to enroll in an ethics course, which recommendation is the subject of the Sixth Cause for Revocation. Another recommendation was Respondent should be required to document his participation in a 12-step substance abuse program; this is the subject of the Seventh Cause for Revocation. The PACE program recommended other steps for Respondent to take, including to have a practice monitor, to improve history-taking and exam skills, to improve his knowledge through additional continuing education, and to undergo psychiatric treatment. These are encompassed in the Eighth Cause for Revocation, though the parties mainly contested the issue of additional continuing education.

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## **THE SIXTH CAUSE FOR REVOCATION, ALLEGED FAILURE TO ENROLL IN AN ETHICS COURSE**

61. It is not clear when the PACE report was received by the Board, but on March 5, 2020, Onu wrote to Respondent, and informed him he had successfully passed the PACE program with various recommendations, which Onu spelled out. The fifth recommendation was that Respondent should be required to complete a professionalism—ethics—course.

62. Respondent had previously completed an ethics course, in January 2019.

63. Onu did not follow up on the PACE recommendation to take an ethics course. When Borja took over monitoring of Respondent's probation, she asserted that he had to take the course again, because he was required to comply with the PACE recommendations under Term no. 2. Borja raised the issue during the February 2022 quarterly meeting, and in her follow-up letter she noted that it had been about two years since he had attended PACE. Respondent's protestations that he had already taken the course were unavailing. As of the hearing, Respondent had not re-taken the course.

## **THE SEVENTH CAUSE FOR REVOCATION, ALLEGED FAILURE TO DOCUMENT PARTICIPATION IN A 12-STEP PROGRAM**

64. The PACE recommendation, as provided to Respondent in March 2020, was that he "should be required to demonstrate ongoing participation in a 12-step base substance abuse recovery program for the remainder of his probation." (Ex. 22, p. A250.)

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65. Respondent testified he informed his first two probation monitors, during their meetings, that he was participating in a 12-step program. There is no evidence the demanded further verification. Respondent informed Borja of such when they met in February 2022. She wanted written verification of participation and she gave him a form he could use; she wanted the form prepared on a monthly basis.

66. Borja's follow-up letter from the May 27, 2022 quarterly meeting does not raise the issue of verification of the participation in the 12-step program. Her follow-up letter from the July 29, 2022, meeting did raise the issue, and she directed Respondent to provide the July report by August 10, 2022, and the August report by September 10, 2022. (Ex. 25, p. A259.)

67. On August 24, 2022, Borja sent a non-compliance letter to Respondent, which asserted he had failed to comply with PACE recommendations. It encompassed the issue of the ethics course, but not the issue of the 12-step program or its documentation.

68. Respondent offered in evidence two Board forms that documented Respondent's participation in 12-step programs. Exhibit A, signed by Respondent on August 24, 2022, was verified by the group facilitator; he confirmed participation by Zoom Video Conference from April 21 to August 10, 2022. Exhibit B verified Respondent's participation in a different 12 step meeting from August 10, 2022 to August 24, 2022. However, Respondent acknowledged during the hearing that these two exhibits were not sent to Borja. Respondent provided signed participation logs for the period May 2016 through June 2019; the documents, found in Exhibit C, total 29 pages. He testified these were provided to the Board prior to the stipulation.

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69. Respondent's Exhibit N is a letter from a retired physician who met Respondent in approximately 2015 through Caduceus Alcoholics Anonymous meetings. The physician, Dr. Elsworth P. Williams, M.D., started the group in 2008, and became Respondent's sponsor. In September 2019, Dr. Williams turned the leadership of the Caduceus meeting over to Respondent who sustained the program during the pandemic.

### **THE EIGHTH CAUSE FOR REVOCATION, ALLEGED FAILURE TO COMPLETE PACE IN VIOLATION OF TERM 2**

70. The Eighth Cause for Revocation is not a model of clear pleading. It appears that the violations that Respondent allegedly committed are documented in a Non-Compliance Letter from Borja to Respondent, dated August 24, 2022. In that letter, she asserts Respondent had not complied with the PACE recommendations that Respondent improve his history and physical exam skills, improve knowledge, enroll in the ethics course, and undergo psychiatric treatment. Just how Respondent failed to comply is not really pleaded. (The failure to take another ethics course is the subject of the Sixth Cause for Revocation, discussed above.)

71. The PACE report advised that to improve his skills, Respondent should review and study a web-based program available from UCSD. There is no evidence Respondent did so, although he contended that he reviewed a program offered by the University of Michigan.

72. On the issue of improving knowledge, PACE recommended two things: to review the US Preventative Service Task Force (USPSTF) guidelines for primary care, and to require Respondent to obtain double the annual CME hours, "(at least 50 per year) each year for the remainder of his probation." (Ex. 22, p. A250.)

73. It does not appear that Respondent reviewed the USPSTF guidelines, but Petitioner has not pressed the issue in the pleading, or during the hearing. As to additional CME hours, it does not appear this recommendation was raised by Onu during the period after he communicated the recommendation (March 5, 2020) and before the child support suspension and then default revocation occurred later in 2020.

74. It should be noted that this recommendation may conflict with Term No. 16, which provided that Respondent was to take 20 hours per year of CME in excess of the regular CME requirement, and which further stated "Respondent shall provide proof of 65 hours of CME of which 20 hours were in satisfaction of this condition." (Ex. 1, p. A37, L's 3-4.)

75. During 2017 to 2021, Respondent was taking 65 to 68 hours of CME per year, and he showed 44.5 hours during 2022 as of the hearing dates. (Ex. W.)

76. When Borja took over supervision of Respondent's case, she informed him that this recommendation obligated him to take 90 hours of CME per year. In her follow-up letter of February 14, she stated that Term no. 16 required 65 hours per year for license renewal, 40 being the base and 25 hours added by Term no. 16. She then stated that another 25 hours should be added, for a total of 90 hours. Just how Borja got to 90 hours is not clear; it would be reasonable to conclude that PACE might have wanted to double the usual 40 hours per year. It is inferred PACE made recommendations without knowledge of the particulars of Term No. 16; its recommendation called for a minimum of 50 hours, less than that imposed by probation.

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77. As to psychiatric treatment, Respondent informed Borja he was treating with David Desai, M.D., a psychiatrist. He also offered evidence at the hearing that he has treated with a psychologist, Scott Su, Ph.D., since April 2019, and that prior to that, he had been treated by William C. Shearer. It appears that quarterly reports from Dr. Desai were not routinely submitted.

### **Respondent's Evidence**

78. Respondent claims sobriety since October 12, 2015. He regularly participates in AA meetings, and as noted by Dr. Williams, Respondent has undertaken leadership of an AA group made up of medical professionals. He hasn't had one dirty biological fluid test, including since prior to probation, and through the end of the hearing.

79. Respondent has participated in a substance support group led by William C. Shearer, a licensed psychologist. The group, Mindful Choices for Well-Being, covers numerous topics such as mindfulness, addiction pharmacology, and fitness. Respondent has participated in the group since 2017, and Shearer was Respondent's treating psychologist from December 2017 to April 2019. He supports Respondent in this matter wholeheartedly.

80. Respondent has taken courses pertaining to addiction, and its treatment, such as "alcohol/drug studies," or addiction severity index, in addition to his CME courses. He is presently teaching the course "Pharmacology for Addiction Professionals" at San Bernardino Valley College.

81. Respondent performs volunteer work for the Argo Initiative, a conservation education and research vessel that is being fitted out in Huntington Harbor, California.

82. Respondent has the support of numerous individuals, including the Department Chair who hired him to teach at San Bernardino Valley College, Melinda MoneyMaker; Dr. Shearer; Dr. Su; Dr. Desai, and others, who find him sincere, upstanding, in recovery, and an asset to the community. They believe in his ability to practice medicine.

83. Respondent expressed much frustration during parts of the hearing, asserting it is virtually impossible to comply with the PACE recommendation to have a fully proctored practice. He expressed that when he finally found a potential employer who would comply with the various practice restrictions, Borja told him he could not practice. It appears from Dr. Shearer's letter that Respondent feels downtrodden, not treated fairly by the probation program. Shearer made clear, however, that Respondent strongly desires to return to the practice of medicine.

### **Costs**

84. The Board has incurred costs of investigation and enforcement totaling \$34,230. These costs are reasonable on their face. However, Respondent attested to having virtually no income, and to relying on family and friends for support.

## **LEGAL CONCLUSIONS**

1. Jurisdiction to proceed in this matter pursuant to Code section 2227, and provisions of the underlying probation order, was established based on Factual Findings 1 through 5.

2. The standard of proof in an action to revoke probation is preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1442.)

“Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ [Citations omitted.] . . . The sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325; italics in original.) Preponderance of the evidence means that “the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side.” (*Id.* at p. 325.)

3. Petitioner has sustained his First Cause for Revocation, as it was proven Respondent committed major and minor violations of Term no. 8, by failing to comply with the provisions obligating him to participate in biological fluid testing, on numerous occasions. (Factual Findings 20-32.)

4. Petitioner sustained his Fourth Cause for Revocation, as it was proven Respondent did not practice for a period exceeding 18 months, and he did not complete SPEX or PACE again, as required. This violated Term no. 23. (Factual Findings 46-58.)

5. Petitioner sustained his Fifth Cause for Revocation, as it was proven Respondent did not practice for a period exceeding two years, in violation of Term no. 23. (Factual Findings 46-58.)

6. Petitioner proved allegations of other causes for revocation, but they are not otherwise sustained. For example, it was proven that a citation order was issued for violations of Term no. 8, and that Respondent was fined as a result. But that claim only embellishes the charge that Respondent violated Term no. 8. The claim that Respondent did not surrender his DEA license is established, in the sense it was not “surrendered,” but the claim has little weight, given the fact that Respondent’s first two

probation monitors were satisfied with Respondent's explanations, and the information from the DEA that the permit had been cancelled. The fact that Respondent had not "verified" participation in a 12 step program in writing before Borja raised the issue is given little weight in light of Onu's failure to make an issue of it, and, it is clear that Respondent has and does participate in 12 step meetings on a regular basis.

7. Aside from the First, Fourth, and Fifth Causes for revocation, the other claims were not established, or the violations were relatively minor or technical.

8. Cause has been established to set aside the order staying the revocation of Respondent's certificate, and to impose the order of revocation, based on Legal Conclusions 1 through 5, and their factual predicates.

9. The Board is entitled to its costs of investigation and prosecution, which amount to \$34,230, which are reasonable. However, payment is not ordered at this time in light of the order that follows, and the Respondent's lack of resources. (*Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal.4th 32, 45.)

10. The purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.)

11. Respondent has obtained and maintained sobriety, no small feat given his circumstances in 2015, when addiction obviously had him by the throat. But this matter doesn't just turn on his sobriety. The biggest concern must be that Respondent hasn't practiced since at least October 21, 2015, when the Superior Court ordered him to cease practice. It is fairly inferred that he was not lawfully practicing medicine for

some time before that; the circumstances of his arrests in August and October 2015 indicate he was using his Certificate to deal drugs during that period, and for an unknown period before that. (See Factual Findings 16(A) – 16(D).) The many recommendations by PACE, including the need for significant proctoring and monitoring indicate that while he passed the program, he had significant shortcomings in his skills. That was three years ago.

12. That Respondent has not taken SPEX or retaken PACE deprives the Board of information that would indicate that Respondent could safely practice. And, the fact Respondent missed a testing call in August 2022 does not engender confidence.

13. Respondent testified that compliance with probation seems nearly impossible, and he blames Ms. Borja to some extent. As noted, the reasoning behind the insistence on technical compliance is not clear, such as the demands pertaining to the DEA permit or the claim that Respondent was obligated to perform 90 hours of CME per year to comply with the PACE recommendations. Experience teaches that compliance with license probation is indeed difficult, but other impaired practitioners have succeeded in the past.

14. Weighing all the circumstances, it is concluded that public protection, the Board's paramount goal, requires the revocation of Respondent's Certificate.

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## ORDER

The stay of revocation ordered in the Decision and Order of August 11, 2017, is hereby set aside, and Respondent's Certificate, number A92956 is hereby revoked.

DATE: 12/28/2022



JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings



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8 *Attorneys for Complainant*

9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Petition to  
13 Revoke Probation Against:

14 **BENJAMIN STUART WILBUR, M.D.**  
15 **1900 W. Redlands Blvd., #11424**  
**San Bernardino, CA 92423-2458**

16 Physician's and Surgeon's Certificate  
17 No. A 92956

18 Respondent.

Case No. 800-2019-055423

OAH No. 2022030116

FIRST AMENDED PETITION TO  
REVOKE PROBATION

19  
20 **PARTIES**

21 1. William Prasifka (Complainant) brings this First Amended Petition to Revoke  
22 Probation solely in his official capacity as the Executive Director of the Medical Board of  
23 California (Board).

24 2. On or about September 30, 2005, the Medical Board of California issued Physician's  
25 and Surgeon's Certificate Number A 92956 to Benjamin Stuart Wilbur, M.D. (Respondent). The  
26 Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought  
27 herein and will expire on May 31, 2023, unless renewed.  
28

3. In a disciplinary action entitled *In the Matter of the First Amended Accusation Against Benjamin Stuart Wilbur, M.D.*, Case No. 800-2015-016182, the Board issued a decision effective September 8, 2017, in which Respondent's Physician's and Surgeon's Certificate was revoked. The revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of seven (7) years with certain terms and conditions. Effective September 8, 2017, pursuant to Probation Condition 1 Respondent was suspended from the practice of medicine for one year. A copy of that decision is attached as Exhibit A and is incorporated by reference.

## JURISDICTION

4. This First Amended Petition to Revoke Probation is brought before the Board under the authority of the following laws. Unless otherwise indicated, all section references are to the Business and Professions Code (Code).

5. Section 2001.1 of the Code states:

Protection of the public shall be the highest priority for the Medical Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

6. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

- (1) Have his or her license revoked upon order of the board.
- (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
- (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
- (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
- (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

7. Section 2004 of the Code states:

The board shall have the responsibility for the following:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

(f) Approving undergraduate and graduate medical education programs.

(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

(h) Issuing licenses and certificates under the board's jurisdiction.

(i) Administering the board's continuing medical education program.

8. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

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(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

1 (5) Have any other action taken in relation to discipline as part of an order of  
2 probation, as the board or an administrative law judge may deem proper.

3 (b) Any matter heard pursuant to subdivision (a), except for warning letters,  
4 medical review or advisory conferences, professional competency examinations,  
5 continuing education activities, and cost reimbursement associated therewith that are  
6 agreed to with the board and successfully completed by the licensee, or other matters  
7 made confidential or privileged by existing law, is deemed public, and shall be made  
8 available to the public by the board pursuant to Section 803.1.

9 9. Section 2228 of the Code states:

10 The authority of the board or the California Board of Podiatric Medicine to  
11 discipline a licensee by placing him or her on probation includes, but is not limited to,  
12 the following:

13 (a) Requiring the licensee to obtain additional professional training and to pass  
14 an examination upon the completion of the training. The examination may be written  
15 or oral, or both, and may be a practical or clinical examination, or both, at the option  
16 of the board or the administrative law judge.

17 (b) Requiring the licensee to submit to a complete diagnostic examination by  
18 one or more physicians and surgeons appointed by the board. If an examination is  
19 ordered, the board shall receive and consider any other report of a complete  
20 diagnostic examination given by one or more physicians and surgeons of the  
21 licensee's choice.

22 (c) Restricting or limiting the extent, scope, or type of practice of the licensee,  
23 including requiring notice to applicable patients that the licensee is unable to perform  
24 the indicated treatment, where appropriate.

25 (d) Providing the option of alternative community service in cases other than  
26 violations relating to quality of care.

27 10. Section of the Code states:

28 (a) Except with respect to persons regulated under Chapter 11 (commencing  
with Section 7500), any board, bureau, or commission within the department, the  
State Board of Chiropractic Examiners, and the Osteopathic Medical Board of  
California, may establish, by regulation, a system for the issuance to a licensee of a  
citation which may contain an order of abatement or an order to pay an administrative  
fine assessed by the board, bureau, or commission where the licensee is in violation  
of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature  
of the violation, including specific reference to the provision of law determined to  
have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement  
fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or  
commission exceed five thousand dollars (\$5,000) for each inspection or each

1 investigation made with respect to the violation, or five thousand dollars (\$5,000) for  
2 each violation or count if the violation involves fraudulent billing submitted to an  
3 insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the  
4 board, bureau, or commission shall give due consideration to the appropriateness of  
5 the amount of the fine with respect to factors such as the gravity of the violation, the  
6 good faith of the licensee, and the history of previous violations.

7 (4) A citation or fine assessment issued pursuant to a citation shall inform the  
8 licensee that if the licensee desires a hearing to contest the finding of a violation, that  
9 hearing shall be requested by written notice to the board, bureau, or commission  
10 within 30 days of the date of issuance of the citation or assessment. If a hearing is not  
11 requested pursuant to this section, payment of any fine shall not constitute an  
12 admission of the violation charged. Hearings shall be held pursuant to Chapter 5.  
13 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the  
14 Government Code.

15 (5) Failure of a licensee to pay a fine or comply with an order of abatement, or  
16 both, within 30 days of the date of assessment or order, unless the citation is being  
17 appealed, may result in disciplinary action being taken by the board, bureau, or  
18 commission. Where a citation is not contested and a fine is not paid, the full amount  
19 of the assessed fine shall be added to the fee for renewal of the license. A license shall  
20 not be renewed without payment of the renewal fee and fine.

### 21 REGULATORY PROVISIONS

22 11. Title 16, Code of Regulations section 1361.52 states:

23 (a) A licensee who does any of the following shall be deemed to have  
24 committed a major violation of his or her probation:

25 (1) Fails to undergo a required clinical diagnostic evaluation;

26 (2) Commits multiple minor violations of probation conditions and terms;

27 (3) Treats a patient or patients while under the influence of a prohibited  
28 substance;

(4) Engage in any drug or alcohol related act that is a violation of state or  
federal law or regulation;

(5) Fails to undergo biological fluid testing when ordered;

(6) Uses, consumes, ingests, or administers to himself or herself a prohibited  
substance;

(7) Knowingly uses, makes, alters, or possesses any object or product in such a  
way as to defraud or attempt to defraud a biological fluid test designed to detect the  
presence of a prohibited substance; or

(8) Fails to comply with any term or condition of his or her probation that  
impairs public safety.

(b) If a licensee commits a major violation, the Board will take one or more of  
the following actions:

1 (1) Issue an immediate cease-practice order and order the licensee to undergo a  
2 clinical diagnostic evaluation at the expense of the licensee. Any order issued by the  
3 Board pursuant to this subsection shall state that the licensee must test negative for at  
4 least a month of continuous biological fluid testing before being allowed to resume  
5 practice.

6 (2) Increase the frequency of biological fluid testing.

7 (3) Refer the licensee for further disciplinary action, such as suspension,  
8 revocation, or other action as determined by the Board.

9 (c) A licensee who does any of the following shall be deemed to have  
10 committed a minor violation of his or her probation:

11 (1) Fails to submit required documentation to the Board in a timely manner;

12 (2) Has an unexcused absence at a required meeting;

13 (3) Fails to contact a worksite monitor as required; or

14 (4) Fails to comply with any term or condition of his or her probation that does  
15 not impair public safety.

16 (d) If a licensee commits a minor violation, the Board will take one or more of  
17 the following actions:

18 (1) Issue a cease-practice order;

19 (2) Order practice limitations;

20 (3) Order or increase supervision of licensee;

21 (4) Order increased documentation;

22 (5) Issue a citation and fine, or a warning letter;

23 (6) Order the licensee to undergo a clinical diagnostic evaluation at the expense  
24 of the licensee;

25 (7) Take any other action as determined by the Board.

26 (e) Nothing in this section shall be considered a limitation on the Board's  
27 authority to revoke the probation of a licensee who has violated a term or condition of  
28 that probation.

12. Title 16, Code of Regulations section 1364.10 states:

(a) For purposes of this article, "board official" shall mean the executive  
director of the board or his or her designee.

(b) A board official is authorized to determine when and against whom a  
citation will be issued and to issue citations containing orders of abatement and fines  
for violations by a licensed physician or surgeon, licensed midwife, or  
polysomnographic technologist, technician, or trainee of the statutes and regulations  
referred to in Section 1364.11.

1 (c) A citation shall be issued whenever any fine is levied or any order of  
2 abatement is issued. Each citation shall be in writing and shall describe with  
3 particularity the nature and facts of the violation, including a reference to the statute  
4 or regulations alleged to have been violated. The citation shall be served upon the  
5 individual personally or by certified mail.

### 6 COST RECOVERY

7 13. Section 125.3 of the Code states:

8 (a) Except as otherwise provided by law, in any order issued in resolution of a  
9 disciplinary proceeding before any board within the department or before the  
10 Osteopathic Medical Board, upon request of the entity bringing the proceeding, the  
11 administrative law judge may direct a licensee found to have committed a violation or  
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
13 investigation and enforcement of the case.

14 (b) In the case of a disciplined licensee that is a corporation or a partnership, the  
15 order may be made against the licensed corporate entity or licensed partnership.

16 (c) A certified copy of the actual costs, or a good faith estimate of costs where  
17 actual costs are not available, signed by the entity bringing the proceeding or its  
18 designated representative shall be prima facie evidence of reasonable costs of  
19 investigation and prosecution of the case. The costs shall include the amount of  
20 investigative and enforcement costs up to the date of the hearing, including, but not  
21 limited to, charges imposed by the Attorney General.

22 (d) The administrative law judge shall make a proposed finding of the amount  
23 of reasonable costs of investigation and prosecution of the case when requested  
24 pursuant to subdivision (a). The finding of the administrative law judge with regard  
25 to costs shall not be reviewable by the board to increase the cost award. The board  
26 may reduce or eliminate the cost award, or remand to the administrative law judge if  
27 the proposed decision fails to make a finding on costs requested pursuant to  
28 subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as  
directed in the board's decision, the board may enforce the order for repayment in any  
appropriate court. This right of enforcement shall be in addition to any other rights  
the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be  
conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or  
reinstate the license of any licensee who has failed to pay all of the costs ordered  
under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion,  
conditionally renew or reinstate for a maximum of one year the license of any  
licensee who demonstrates financial hardship and who enters into a formal agreement  
with the board to reimburse the board within that one year for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement  
for costs incurred and shall be deposited in the fund of the board recovering the costs  
to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

#### **Procedural History**

14. Effective September 8, 2017, Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of seven (7) years with certain terms and conditions. Effective September 8, 2017, pursuant to Probation Condition 1, Respondent was suspended from the practice of medicine for one year.

15. Respondent was on probation for 21 months, 21 days, from September 9, 2018, [the day after his one year suspension term ended] through August 7, 2020, the effective date of the Board's Default Decision for Respondent's failure to timely respond to the filing of the petition to revoke probation.

16. Respondent was not on probation from August 7, 2020 through December 10, 2021, the date Respondent's Writ to overturn the Board's Default Decision was granted. On December 30, 2021, Respondent filed an application with the Board to renew his license. On February 13, 2022, the Board granted Respondent's application to renew his license and Respondent was placed back on probation under the same terms and conditions which were in effect on September 8, 2017, when Respondent's Physician's and Surgeon's Certificate was initially placed on probation for a period of seven (7) years.

#### **PROBATION ORDER CONDITIONS REGARDING VIOLATION OF PROBATION**

17. At all times after the effective date of Respondent's probation, Condition 25 of Respondent's Probation Order stated:

"VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until



1 the matter is final.”

2 18. At all times after the effective date of Respondent's probation, Condition 12 of  
3 Respondent's Probation Order stated:

4 “VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING  
5 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of  
6 probation.

7 “A. If Respondent commits a major violation of probation as defined by section 1361.52,  
8 subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or  
9 more of the following actions:

10 “(1) Issue an immediate cease-practice order and order Respondent to undergo a clinical  
11 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of  
12 Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice  
13 order issued by the Board or its designee shall state that Respondent must test negative for at least  
14 a month of continuous biological fluid testing before being allowed to resume practice. For  
15 purposes of determining the length of time a Respondent must test negative while undergoing  
16 continuous biological fluid testing following issuance of a cease-practice order, a month is  
17 defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until  
18 notified in writing by the Board or its designee that he or she may do so.

19 “(2) Increase the frequency of biological fluid testing.

20 “(3) Refer Respondent for further disciplinary action, such as suspension, revocation, or  
21 other action as determined by the Board or its designee.

22 “B. If Respondent commits a minor violation of probation as defined by section 1361.52,  
23 subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or  
24 more of the following actions:

25 “(1) Issue a cease-practice order;

26 “(2) Order practice limitations;

27 “(3) Order or increase supervision of Respondent;

28 “(4) Order increased documentation;

1       “(5) Issue a citation and fine, or a warning letter;

2       “(6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in  
3 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of  
4 Regulations, at Respondent’s expense;

5       “(7) Take any other action as determined by the Board or its designee.

6       “C. Nothing in this Decision shall be considered a limitation on the Board’s authority to  
7 revoke Respondent’s probation if he or she has violated any term or condition of probation. If  
8 Respondent violates probation in any respect, the Board, after giving Respondent notice and the  
9 opportunity to be heard, may revoke probation and carry out the disciplinary order that was  
10 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed  
11 against Respondent during probation, the Board shall have continuing jurisdiction until the matter  
12 is final, and the period of probation shall be extended until the matter is final.”

13                   **FIRST CAUSE TO REVOKE PROBATION**

14                   **(Biological Fluid Testing)**

15       19. At all times after the effective date of Respondent's probation, Condition 8 of  
16 Respondent’s Probation Order stated:

17       “BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to biological  
18 fluid testing, at Respondent's expense, upon request of the Board or its designee. ‘Biological  
19 fluid testing’ may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or  
20 similar drug screening approved by the Board or its designee. Respondent shall make daily  
21 contact with the Board or its designee to determine whether biological fluid testing is required.  
22 Respondent shall be tested on the date of the notification as directed by the Board or its designee.  
23 The Board may order a Respondent to undergo a biological fluid test on any day, at any time,  
24 including weekends and holidays. Except when testing on a specific date as ordered by the Board  
25 or its designee, the scheduling of biological fluid testing shall be done on a random basis. The  
26 cost of biological fluid testing shall be borne by the Respondent.

27       “During the first year of probation, Respondent shall be subject to 52 to 104 random tests.  
28 During the second year of probation and for the duration of the probationary term, up to five (5)

1 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no  
2 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing  
3 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number  
4 of random tests to the first-year level of frequency for any reason.

5 “Prior to practicing medicine, Respondent shall contract with a laboratory or service,  
6 approved in advance by the Board or its designee, that will conduct random, unannounced,  
7 observed, biological fluid testing and meets all of the following standards:

8 “(a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry  
9 Association or have completed the training required to serve as a collector for the United States  
10 Department of Transportation.

11 “(b) Its specimen collectors conform to the current United States Department of  
12 Transportation Specimen Collection Guidelines.

13 “(c) Its testing locations comply with the Urine Specimen Collection Guidelines published  
14 by the United States Department of Transportation without regard to the type of test administered.

15 “(d) Its specimen collectors observe the collection of testing specimens.

16 “(e) Its laboratories are certified and accredited by the United States Department of Health  
17 and Human Services.

18 “(f) Its testing locations shall submit a specimen to a laboratory within one (1) business day  
19 of receipt and all specimens collected shall be handled pursuant to chain of custody procedures.  
20 The laboratory shall process and analyze the specimens and provide legally defensible test results  
21 to the Board within seven (7) business days of receipt of the specimen. The Board will be  
22 notified of non-negative results within one (1) business day and will be notified of negative test  
23 results within seven (7) business days.

24 “(g) Its testing locations possess all the materials, equipment, and technical expertise  
25 necessary in order to test Respondent on any day of the week.

26 “(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens  
27 for the detection of alcohol and illegal and controlled substances.

28 “(i) It maintains testing sites located throughout California.

1 “(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line  
2 computer database that allows the Respondent to check in daily for testing.

3 “(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff  
4 access to drug test results and compliance reporting information that is available 24 hours a day.

5 “(l) It employs or contracts with toxicologists that are licensed physicians and have  
6 knowledge of substance abuse disorders and the appropriate medical training to interpret and  
7 evaluate laboratory biological fluid test results, medical histories, and any other information  
8 relevant to biomedical information.

9 “(m) It will not consider a toxicology screen to be negative if a positive result is obtained  
10 while practicing, even if the Respondent holds a valid prescription for the substance.

11 “Prior to changing testing locations for any reason, including during vacation or other  
12 travel, alternative testing locations must be approved by the Board and meet the requirements  
13 above.

14 “The contract shall require that the laboratory directly notify the Board or its designee of  
15 non-negative results within one (1) business day and negative test results within seven (7)  
16 business days of the results becoming available. Respondent shall maintain this laboratory or  
17 service contract during the period of probation.

18 “A certified copy of any laboratory test result may be received in evidence in any  
19 proceedings between the Board and Respondent.

20 “If a biological fluid test result indicates Respondent has used, consumed, ingested, or  
21 administered to himself or herself a prohibited substance, the Board shall order Respondent to  
22 cease practice and instruct Respondent to leave any place of work where Respondent is practicing  
23 medicine or providing medical services. The Board shall immediately notify all of Respondent’s  
24 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or  
25 provide medical services while the cease-practice order is in effect.

26 “A biological fluid test will not be considered negative if a positive result is obtained while  
27 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited  
28 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

1       “After the issuance of a cease-practice order, the Board shall determine whether the positive  
2 biological fluid test is in fact evidence of prohibited substance use by consulting with the  
3 specimen collector and the laboratory, communicating with the licensee, his or her treating  
4 physician(s), other health care provider, or group facilitator, as applicable.

5       “For purposes of this condition, the terms “biological fluid testing” and “testing” mean the  
6 acquisition and chemical analysis of a Respondent’s urine, blood, breath, or hair.

7       “For purposes of this condition, the term “prohibited substance” means an illegal drug, a  
8 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by  
9 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been  
10 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

11       “If the Board confirms that a positive biological fluid test is evidence of use of a prohibited  
12 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the  
13 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to  
14 any other terms or conditions the Board determines are necessary for public protection or to  
15 enhance Respondent’s rehabilitation.”

16       20. Respondent's probation is subject to revocation because he failed to comply with  
17 Probation Condition 8, referenced above. The facts and circumstances regarding this violation  
18 are as follows:

19       21. On or about August 17, 2017, the Board sent Respondent a letter informing him that  
20 FirstSource Solutions (“FirstSource”) was the Board’s approved laboratory service. In that letter  
21 the Board directed Respondent to enroll in FirstSource to enable FirstSource to conduct the  
22 random biological fluid testing required by the terms and conditions of his Probation Order.

23       22. In the Board’s August 17, 2017, letter the Board notified Respondent that he needed  
24 to check the FirstSource system daily to determine if FirstSource required him to submit a  
25 biological sample for testing that day.

26       23. On September 7, 2017, the day prior to the first effective date of Respondent’s  
27 probation, Respondent met with the Board’s probation analyst who provided him with a copy of  
28 the Probation Order, effective September 8, 2017, in Case No. 800-2015-016182, which placed

Respondent on probation for a period of seven (7) years with certain terms and conditions. The Board's probation analyst reviewed each and every term and condition of Respondent's Probation Order with Respondent.

24. On September 7, 2017, after Respondent reviewed the Probation Order with the probation analyst, Respondent signed an "Acknowledgement of Decision" that indicated he understood the terms and conditions of his Probation Order.

#### **MINOR VIOLATIONS**

25. Respondent failed to check-in with FirstSource, thereby committing multiple "minor" violations of Condition 8 of his Probation Order, on the following dates:

**2017:** October 31, 2017; November 11, 2017.

**2018:** May 3, 2018; May 22, 2018; September 24, 2018; October 9, 2018; November 4, 2018.

**2019:** January 25, 2019; February 2, 2019; March 23, 2019; May 14, 2019; June 10, 2019; October 19, 2019; November 2, 2019; December 9, 2019; December 27, 2019.

**2020** May 14, 2020; May 26, 2020; July 21, 2020; July 25, 2020.

**2022:** February 18, 2022; and August 27, 2022.

26. On June 12, 2019, Respondent's Biological Fluid Testing Associate Governmental Program Analyst [BFT analyst] sent Respondent a letter via certified mail in which she notified him that he had failed to check-in with FirstSource for his required random biological fluid testing on May 14, 2019, and June 10, 2019.

27. In the June 12, 2019, letter Respondent's BFT analyst directed Respondent to provide her with a written statement which explained why he failed to check-in to determine if he was required to provide biological fluid for random drug testing. Respondent's BFT analyst instructed Respondent to include in his statement an explanation of his plans to ensure he did not miss future check-ins. Respondent's BFT analyst directed him to provide the letter by June 19, 2019. Further, Respondent's BFT analyst used bold type when she instructed him to sign his statement under penalty of perjury.

Respondent did not provide the requested statement to his BFT analyst.

28. On October 31, 2019, Respondent's BFT analyst sent Respondent a letter via certified

1 mail in which she notified him that he had failed to check-in with FirstSource for his required  
2 random biological fluid testing on October 19, 2019.

3 29. In the October 31, 2019, letter Respondent's BFT analyst directed Respondent to  
4 provide her with a written statement which explained why he failed to check-in to determine if he  
5 was required to provide biological fluid for random drug testing. Respondent's BFT analyst  
6 instructed Respondent to include in his statement an explanation of his plans to ensure he did not  
7 miss future check-ins. Respondent's BFT analyst directed him to provide the letter by November  
8 5, 2019. Further, Respondent's BFT analyst used bold type when she instructed him to sign his  
9 statement under penalty of perjury.

10 Respondent did not provide the requested statement to his BFT analyst.

11 30. On December 27, 2019, Respondent's BFT analyst sent Respondent a letter via  
12 certified mail in which she notified him that he had failed to check-in with FirstSource for his  
13 required random biological fluid testing on December 9, 2019.

14 31. In the December 27, 2019, letter Respondent's BFT analyst directed Respondent to  
15 provide her with a written statement which explained why he failed to check-in to determine if he  
16 was required to provide biological fluid for random drug testing. Respondent's BFT analyst  
17 instructed Respondent to include in his statement an explanation of his plans to ensure he did not  
18 miss future check-ins.

19 Respondent's BFT analyst directed him to provide the letter by January 3, 2020. Further,  
20 Respondent's BFT analyst used bold type when she instructed him to sign his statement under  
21 penalty of perjury.

22 Respondent did not provide the requested statement to his BFT analyst.

23 32. On April 2, 2020, Respondent's BFT analyst sent Respondent a **NON-**  
24 **COMPLIANCE LETTER** [emphasis in original] via certified mail in which she notified him  
25 that she was concerned about Respondent's compliance with his probationary terms and  
26 conditions.

27 33. In the April 2, 2020, letter Respondent's BFT analyst stated Respondent failed to  
28 check-in with FirstSource for his required random biological fluid testing on May 14, 2019, June

1 10, 2019, October 19, 2019, November 2, 2019, December 9, 2019, December 27, 2019, January  
2 1, 2020, and January 23, 2020.

3 34. In the April 2, 2020, letter Respondent's BFT analyst further stated that on December  
4 16, 2019, Respondent failed to supply a blood sample when selected to do so. Instead,  
5 Respondent chose to provide a urine test instead of the blood test FirstSource requested him to  
6 provide.

7 35. The April 2, 2020, letter stated that Respondent was on notice that he was in violation  
8 of the biological fluid testing requirement of his probation order due to his failure to cooperate  
9 with random biological fluid testing.

10 36. On May 27, 2020, Respondent's BFT analyst sent Respondent a **NON-**  
11 **COMPLIANCE LETTER** [emphasis in original] via certified mail in which she notified him  
12 that she was concerned about Respondent's compliance with his probationary terms and  
13 conditions.

14 37. In the May 27, 2020, letter Respondent's BFT analyst stated Respondent failed to  
15 check-in with FirstSource for his required random biological fluid testing on May 14, 2020, and  
16 May 26, 2020.

17 38. The May 27, 2020, letter stated that per the Board's Order [sic] "... you shall make  
18 daily contact with the Board or its designee to determine whether biological testing is required  
19 and you shall be tested on the date of the notification as directed."

20 39. The May 27, 2020, letter stated that "This letters serves as notice that you are in  
21 violation of the biological fluid testing requirement of your probation order and that continued  
22 failure to cooperate with the biological fluid testing requirement could constitute grounds to issue  
23 a citation and fine."

24 40. On July 30, 2020, Respondent's BFT analyst sent Respondent a **NON-**  
25 **COMPLIANCE LETTER** [emphasis in original] via certified mail. In the July 30, 2020, letter  
26 Respondent's BFT analyst stated Respondent failed to check-in with FirstSource for his required  
27 random biological fluid testing on July 21, 2020, and July 25, 2020.

28 41. The July 30, 2020, letter stated that per the Order [sic] "... you shall make daily



1 contact with the Board or its designee to determine whether biological testing is required and you  
2 shall be tested on the date of the notification as directed.”

3 42. The July 30, 2020, letter stated that “This letter serves as notice that you are in  
4 violation of the biological fluid testing requirement of your probation order and that continued  
5 failure to cooperate with the biological fluid testing requirement could constitute grounds for  
6 further action taken against your license.”

7 43. On February 8, 2022, Respondent’s BFT analyst sent Respondent via certified mail a  
8 two page letter titled “RE: Biological Fluid Testing” with seven pages of attachments. The BFT  
9 analyst’s letter notified him that she was the biological fluid analyst assigned to monitor his  
10 compliance with the following conditions of Respondent’s probation: biological fluid testing and  
11 abstain from alcohol and controlled substances. The letter provided Respondent with the BFT  
12 analyst’s email address and phone number.

13 44. The February 8, 2022, letter provided him with the contact information for  
14 Respondent’s required enrollment into FSSolutions that was the Board approved laboratory  
15 service which conducted random biological fluid testing required by his probation. The February  
16 8, 2022, letter included attachments that provided further information about how to enroll into the  
17 FSSolutions program and how to comply with the FSSolutions program’s testing requirements.

18 45. On February 23, 2022, Respondent’s BFT analyst sent Respondent a NON-  
19 COMPLIANCE LETTER [emphasis in original] via certified mail. In the February 23, 2022,  
20 letter Respondent’s BFT analyst stated Respondent failed to check-in with FSSolutions for his  
21 required random biological fluid testing on February 18, 2022.

22 46. The February 23, 2022, letter stated that “Upon enrollment with FSSolutions, you  
23 were provided information on how to ‘check in’ with the FSSolutions system daily, via website,  
24 to determine if you are selected for testing. You must check-in daily during the program hours of  
25 12:00 a.m. and 5:00 p.m. to avoid receiving a missed check-in violation and being unable to  
26 receive your testing notification.”

27 47. The February 23, 2022, letter stated “This letter serves as notice that you are in  
28 violation of the biological fluid testing requirement of your probation order and continued failure

1 to cooperate with the biological fluid testing requirement could constitute grounds for issuance of  
2 a citation and fine.”

3 48. On August 29, 2022, Respondent’s BFT analyst sent Respondent a NON-  
4 COMPLIANCE LETTER [emphasis in original] via certified mail. In the August 29, 2022,  
5 letter Respondent’s BFT analyst stated Respondent failed to check in with FSSolutions for his  
6 required random biological fluid testing on August 27, 2022.

7 49. The August 29, 2022, letter stated that “Upon enrollment with FSSolutions (FSS –  
8 Vault Health), you were provided information on how to ‘check in’ with the FSS – Vault Health  
9 system daily, via website, to determine if you are selected for testing. You must check-in daily  
10 during the program hours of 12:00 a.m. and 5:00 p.m. to avoid receiving a missed check-in  
11 violation and being unable to receive your testing notification.”

12 50. The August 29, 2022, letter stated that “This letter serves as notice that you are in  
13 violation of the biological fluid testing condition of your probation order and continued failure to  
14 cooperate with the biological fluid testing condition could constitute grounds for further action  
15 against your license.”

16 51. On August 29, 2022, Respondent emailed his BFT analyst as follows, “ Hello  
17 Jennifer, I did forget to checkin during the time period specified by FSSolutions. However, I did  
18 make an effort to checkin as soon as I remembered. (See attached photo) Finally, I went ahead  
19 and voluntarily tested at Concerta on 8/27/2022. Sincerely, Benjamin Wilbur, M.D.”

20 52. On August 30, 2022, Respondent’s BFT analyst emailed Respondent, stating  
21 “Thank you Dr. Wilbur, I have added the information to your file. The biological fluid testing  
22 condition of probation requires that you must check-in daily and submit to testing when selected.  
23 Submitting a sample may prevent you from missing a test had you been selected; however it does  
24 not excuse you from checking in daily. To comply with the biological fluid testing condition of  
25 probation you must check-in with FSS – Vault Health daily.” [emphasis added]

26 53. After Respondent was returned to probationary status in 2022 he failed to check-in  
27 with FSS, thereby committing multiple “minor” violations of Condition 8 of his Probation Order,  
28 on the following dates:

1 2020: January 1, 2020; January 23, 2020; May 26, 2020; July 21, 2020; July 25, 2020.

2 2022: February 18, 2022; March 1, 2022; August 27, 2022; February 18, 2022; March 22, 2022;  
3 and August 27, 2022.

4 **MAJOR VIOLATIONS**

5 54. During Respondent's initial period on probation from the effective date of September  
6 8, 2017, through August 7, 2020, when the Board's Default Decision became effective,  
7 Respondent failed to provide a sample when selected thereby committing multiple "major"  
8 violations of Condition 8 of his Probation Order on the following dates:

9 2017: October 31, 2017; November 26, 2017.

10 2019: February 13, 2019.

11 **SECOND CAUSE TO REVOKE PROBATION**

12 **(Failure to Pay Administrative Fine After Informal Conference)**

13 55. At all times after the effective date of Respondent's probation, Condition 19 of  
14 Respondent's Probation Order stated:

15 "OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
16 governing the practice of medicine in California and remain in full compliance with any court  
17 ordered criminal probation, payments, and other orders."

18 56. At all times after the effective date of Respondent's probation, Condition 25 of  
19 Respondent's Probation Order stated:

20 **"VIOLATION OF PROBATION.** Failure to fully comply with any term or condition of  
21 probation is a violation of probation. If Respondent violates probation in any respect, the Board,  
22 after giving Respondent notice and the opportunity to be heard, may revoke probation and carry  
23 out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or  
24 an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
25 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
26 the matter is final."

27 57. Respondent's probation is subject to revocation because he failed to comply with  
28 Probation Conditions 19 and 25, referenced above. The facts and circumstances regarding this

1 violation are as follows:

2 58. Respondent failed to check-in with FirstSource, thereby committing multiple “minor”  
3 violations of Condition 8 of his Probation Order, on the following dates: February 18, 2022;  
4 March 22, 2022.

5 59. On March 28, 2022, the Board issued Citation Order No. 800-2022-086739 for  
6 violation of Title 16, Code of Regulations section 1364.10 subdivision (b) as a result of  
7 Respondent’s multiple “minor” violations of Condition 8 of his Probation Order on the following  
8 dates: February 18, 2022; March 22, 2022.

9 60. Respondent appealed the Board’s Citation Order and requested an informal  
10 conference and the informal conference was held April 12, 2022. During the informal conference  
11 Respondent failed to provide any evidence to refute the probation violations resulting from his  
12 failures to check-in with First Source on February 18, 2022 and March 22, 2022.

13 61. After Respondent’s April 12, 2022, informal conference the Board affirmed the  
14 citation and issued an administrative fine of \$1,400.00. In a letter dated May 13, 2022, the Board  
15 notified Respondent it upheld the Citation Order.

16 62. The Board’s May 13, 2022, letter notified Respondent he had the right to either  
17 request an administrative hearing to appeal the administrative fine within 30 days from the date  
18 he received the May 13, 2022 letter, or he could choose to submit the administrative fine  
19 payment. The Board’s May 13, 2022, letter provided Respondent with an option to pay through  
20 the Board’s “BreEZe” system or send a check or money order payable to the Board to a specific  
21 address for the Board.

22 Respondent did not request an administrative hearing to appeal the administrative fine.

23 63. Respondent failed to pay the administrative fine. Respondent violated Probation  
24 Conditions 19 and 25 as a result of his failure to pay his administrative fine.

25 64. On July 27, 2022, the Board notified Respondent by certified mail and email that  
26 Respondent had failed to comply with the Citation Order due to his failure to pay the  
27 administrative fine.

28 65. On August 1, 2022, approximately three months after being notified the Citation

1 Order was upheld, Respondent responded to the Board's July 27, 2022, certified mail and email  
2 notifications with his request for a payment plan.

3 66. Respondent is in violation of Probation Condition 19 as a result of his continuing  
4 failure to pay his administrative fine. Respondent's probation is subject to revocation because he  
5 failed to comply with Probation Condition 19 of his probation.

6 **THIRD CAUSE TO REVOKE PROBATION**

7 **(Controlled Substances -Surrender of DEA permit)**

8 67. At all times after the effective date of Respondent's probation, Condition 4 of  
9 Respondent's Probation Order stated:

10 "CONTROLLED SUBSTANCES - SURRENDER OF DEA PERMIT. Respondent is  
11 prohibited from practicing medicine until Respondent provides documentary proof to the Board  
12 or its designee that Respondent's DEA permit has been surrendered to the Drug Enforcement  
13 Administration for cancellation, together with any state prescription forms and all controlled  
14 substances order forms. Thereafter, Respondent shall not reapply for a new DEA permit without  
15 the prior written consent of the Board or its designee."

16 68. At all times after the effective date of Respondent's probation, Condition 25 of  
17 Respondent's Probation Order stated:

18 "VIOLATION OF PROBATION. Failure to fully comply with any term or condition of  
19 probation is a violation of probation. If Respondent violates probation in any respect, the Board,  
20 after giving Respondent notice and the opportunity to be heard, may revoke probation and carry  
21 out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or  
22 an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
23 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
24 the matter is final."

25 69. Respondent's probation is subject to revocation because he failed to comply with  
26 Probation Condition 4, referenced above. The facts and circumstances regarding this violation  
27 are as follows:  
28

1       70. Respondent was placed on probation under the Board's decision in Case No. 800  
2 2015-016182, effective September 8, 2017. On September 7, 2017, Respondent attended an in-  
3 take interview with probation inspector Holt during which the terms and conditions of his  
4 probation were explained to him. During that meeting Respondent told probation inspector Holt  
5 that he did not have a DEA permit. Respondent did not obtain a duplicate copy of his DEA  
6 permit to complete the requisite actions and surrender his DEA permit in compliance with  
7 Probation Condition 4.

8       71. Respondent's case was re-assigned to probation inspector Onu. Respondent failed to  
9 surrender his DEA permit to probation inspector Onu. Respondent failed to obtain a duplicate  
10 copy of his DEA permit to complete the requisite actions and surrender his DEA permit in  
11 compliance with Probation Condition 4.

12       72. On February 11, 2022, Respondent reported to the Board's San Dimas Probation  
13 office for his scheduled quarterly interview. During that meeting Board Staff Services Manager I  
14 Borja reviewed each term and condition of his probation with Respondent.

15       73. On February 14, 2022, Staff Services Manager I Borja sent Respondent a letter  
16 detailing each item they had discussed during their February 11, 2022 meeting. Staff Services  
17 Manager I Borja's letter stated that if Respondent had any questions Respondent could contact  
18 her directly at the phone number she provided or by email at her email address which she  
19 provided.

20       74. During the February 11, 2022, meeting Board Staff Services Manager I Borja  
21 discussed Respondent's failure to surrender his DEA permit with Respondent. Staff Services  
22 Manager I Borja told Respondent she was aware that his DEA permit had not been renewed but  
23 that the non-renewal status was not relevant to his satisfactory compliance with Probation  
24 Condition 4.

25       75. Staff Services Manager I Borja instructed Respondent to contact the DEA and  
26 complete the specific form needed to surrender his DEA permit. Staff Services Manager I Borja  
27 instructed Respondent to request that the DEA provide email confirmation of Respondent's  
28 completion and submission of the specific form which corroborated Respondent had taken all

1 steps to properly surrender his DEA permit. Staff Services Manager I Borja specifically  
2 instructed Respondent to provide a copy of the DEA email confirmation to her by March 11,  
3 2022.

4 76. Respondent failed to comply with Staff Services Manager I Borja's explicit  
5 instructions regarding how he was to comply with Probation Condition 4. Instead, on March 14,  
6 2022, Respondent provided Staff Services Manager I Borja with an email from the DEA that  
7 stated Respondent no longer had an active DEA registration [emphasis added]. Staff Services  
8 Manager I Borja's March 14, 2022, email response reiterated the information she previously  
9 provided during the February 11, 2022, meeting with Respondent:

10 "Per your Decision you need to surrender your DEA. Surrendering your DEA is  
11 completely different then not renewing it. Per your Decision (below), you are prohibited from  
12 practicing medicine until you provide documentary proof to the Board that your DEA permit has  
13 been surrendered.

14 Please contact the DEA and complete form 104, which is the surrender of your DEA  
15 registration. When contacting the DEA please inform them that there is a Decision on the  
16 Medical Board of California website, and you need **documentary proof that your DEA has**  
17 **been surrendered.** [emphasis in original]"

18 77. Thereafter, on March 14, 2022, Staff Services Manager I Borja sent a "non-  
19 compliance" letter to Respondent regarding his failure to provide the Board with proof of  
20 compliance with Probation Condition 4. In that letter Staff Services Manager I Borja stated:

21 "Please provide proof of compliance by March 17, 2022. Failure to provide proof of  
22 compliance by the due date specified may result in further action, including, but not limited to,  
23 referral for citation and fine."

24 In the letter Staff Services Manager I Borja provided her phone and email contact  
25 information to Respondent once again.

26 78. On May 27, 2022, Respondent reported to the Board's Probation office for his  
27 scheduled quarterly interview. During that meeting Board Staff Services Manager I Borja  
28 reviewed certain terms and conditions of Respondent's probation with him.

79. On May 27, 2022, Staff Services Manager I Borja sent Respondent a letter detailing each item they had discussed during the May 27, 2022 quarterly interview. With regard to Probation Condition 4 Staff Services Manager I Borja stated:

“Your DEA registration has never been surrendered. You tried to tell me that your order states that you need to give me your DEA. I read to you exactly what your order states, you are ‘prohibited from practicing medicine until ‘You’ provide documentary proof to the Board or its designee that ‘your’ DEA permit has been surrendered to the Drug Enforcement Administration for cancellation. You kept insisting that you cannot surrender something that you do not have and that has expired. I explained to you that surrendering your DEA registration is a disciplinary action. I need proof that you have surrendered your DEA registration by **May 31, 2022.**

[emphasis in original]

In the letter Staff Services Manager I Borja provided her phone and email contact information once again.

80. Respondent is in violation of Probation Condition 4 and his probation is subject to revocation as a result of his continuing failure to surrender his DEA permit.

### FOURTH CAUSE TO REVOKE PROBATION

**(Failure to Enroll in SPEX or PACE)**

81. At all times after the effective date of Respondent's probation, Condition 23 of Respondent's Probation Order stated in relevant portion:

“NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. . .

"In the event Respondent's period of non-practice while on probation exceeds 18 calendar



1 months, Respondent shall successfully complete the Federation of State Medical Board's Special  
2 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
3 that meets the criteria of Condition 18 of the current version of the Board's 'Manual of Model  
4 Disciplinary Orders and Disciplinary Guidelines' prior to resuming the practice of medicine.' . . .

5 "Periods of non-practice for a Respondent residing outside of California will relieve  
6 Respondent of the responsibility to comply with the probationary terms and conditions with the  
7 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
8 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
9 Controlled Substances; and Biological Fluid Testing."

10 82. At all times after the effective date of Respondent's probation, Condition 25 of  
11 Respondent's Probation Order stated:

12 "VIOLATION OF PROBATION. Failure to fully comply with any term or condition of  
13 probation is a violation of probation. If Respondent violates probation in any respect, the Board,  
14 after giving Respondent notice and the opportunity to be heard, may revoke probation and carry  
15 out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or  
16 an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
17 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
18 the matter is final."

19 83. Respondent's probation is subject to revocation because he failed to comply with  
20 Probation Conditions 23 and 25, referenced above. The facts and circumstances regarding this  
21 violation are as follows:

22 84. Effective September 8, 2017, Respondent's Physician's and Surgeon's Certificate was  
23 placed on probation for a period of seven (7) years with certain terms and conditions. Effective  
24 September 8, 2017, pursuant to Probation Condition 1 Respondent was suspended from the  
25 practice of medicine for one year.

26 85. Respondent was on probation for 21 months, 21 days, from September 9, 2018, [the  
27 day after his one year suspension term ended] through August 7, 2020, the effective date of the  
28 Board's Default Decision for Respondent's failure to timely respond to the filing of the petition to

1 revoke probation.

2 86. Prior to the effective date of the Default Decision Respondent had been on probation  
3 for 18 months in a non-practice status as of March 9, 2020. Thereafter, from March 10, 2020,  
4 through August 7, 2020, [the effective date of the Board's Default Decision which revoked  
5 Respondent's license] Respondent was required to complete the Federation of State Medical  
6 Board's Special Purpose Examination [SPEX] but failed to do so.

7 87. Respondent was not on probation from August 7, 2020 through December 10, 2021,  
8 the date Respondent's Writ to overturn the Board's Default Decision was granted. On December  
9 30, 2021, Respondent filed an application with the Board to renew his license. On February 13,  
10 2022, the Board granted Respondent's application to renew his license and Respondent was  
11 placed back on probation under the same terms and conditions which were in effect on  
12 September 8, 2017, when Respondent's Physician's and Surgeon's Certificate was placed on  
13 probation for a period of seven (7) years.

14 88. Despite being placed back on probation, Respondent did not enroll in nor did he  
15 successfully complete the Federation of State Medical Board's Special Purpose Examination per  
16 Probation Condition 23.

17 89. On February 11, 2022, Respondent reported to the Board's San Dimas Probation  
18 office for his scheduled quarterly interview. During that meeting Board Staff Services Manager I  
19 Borja reviewed each term and condition of his probation.

20 90. On February 14, 2022, Staff Services Manager I Borja sent Respondent a letter  
21 detailing each item they had discussed during the February 11, 2022, quarterly interview. With  
22 regard to Probation Condition 23 Staff Services Manager I Borja reiterated:

23 "If you reside in California and you are considered to be in non-practice, you shall comply  
24 with all terms and conditions-of probation. . . You have been in non-practice status since your  
25 effective date. I pointed out the part in your Decision which reads, 'If Respondent resides in  
26 California and is considered to be in non-practice, Respondent shall comply with all terms and  
27 conditions of probation.'"

28 91. In the February 14, 2022, letter Staff Services Manager I Borja also referenced

1 Probation Condition 25: "Pursuant to Condition #25 - Violation of Probation - Failure to fully  
2 comply with any term or condition of probation is a violation of probation."

3 Staff Services Manager I Borja's letter stated that if Respondent had any questions  
4 Respondent could contact her directly at the phone number she provided or by email at her email  
5 address which she provided.

6 92. On May 27, 2022, Respondent reported to the Board's San Dimas Probation office  
7 for his scheduled quarterly interview. During that meeting Board Staff Services Manager I Borja  
8 reviewed certain terms and conditions of Respondent's probation with him.

9 93. On May 27, 2022, Staff Services Manager I Borja sent Respondent a letter detailing  
10 each item they had discussed during the May 27, 2022, scheduled quarterly interview. With  
11 regard to Probation Condition 23 Staff Services Manager I Borja reiterated:

12 "We did go over your non-practice time. I informed you that you had already reached the  
13 18 months of non-practice on March 8, 2020, before I started monitoring your probation. Please  
14 sign-up for SPEX or the Clinical Competence Assessment Program at UC San Diego by **May 31,**  
15 **2022.** [emphasis in original] You cannot resume the practice of medicine until you successfully  
16 complete one of the two programs."

17 Staff Services Manager I Borja's letter stated that if Respondent had any questions  
18 Respondent could contact her directly at the phone number she provided or by email at her email  
19 address which she provided.

20 94. On July 29, 2022, Respondent reported to the Board's San Dimas Probation office for  
21 his scheduled quarterly interview. During that meeting Board Staff Services Manager I Borja  
22 reviewed certain terms and conditions of Respondent's probation with him.

23 95. On August 1, 2022, Staff Services Manager I Borja sent Respondent a letter detailing  
24 each item they had discussed during the s July 29, 2022, scheduled quarterly interview. With  
25 regard to Probation Condition 23 Staff Services Manager I Borja stated:

26 "We talked about the fact that you have been in non-practice status for more than 18  
27 months. I reminded you that I had sent you a letter dated May 27, 2022, that you needed to take  
28 SPEX or the Clinical Competence Assessment Program at UC San Diego. You argued with me

1 that you had taken the Clinical Competence Assessment Program. I told you yes, but you have  
2 been in non-practice for more than 18 months. In my letter I had requested that you enroll in the  
3 SPEX exam by May 31, 2022. You cannot resume the practice of medicine until you  
4 successfully complete one of the two programs. You stated that you will bring this up at your  
5 hearing in October. I informed you I was just requiring SPEX and that at 2 years of non-practice  
6 we normally petition to revoke probation. Please enroll in the SPEX exam by August 15, 2022.”

7 Staff Services Manager I Borja’s letter stated that if Respondent had any questions  
8 Respondent could contact her directly at the phone number she provided or by email at her email  
9 address which she provided.

10 96. On August 24, 2022, Staff Services Manager I Borja sent Respondent a non-  
11 compliance letter which stated Respondent was not in compliance with Condition 23 of his  
12 probation. Staff Services Manager I Borja’s August 24, 2022, letter stated in relevant portion:

13 “Re: Condition #23 – Non-Practice While on Probation

14 Dear Dr. Wilbur:

15 Per your Medical Board of California (Board) Decision and Order, you were required to  
16 complete the recommendations from the Clinical Competence Assessment Program. . . You were  
17 instructed to enroll in SPEX by August 15, 2022. As of the date of this letter, the Board has not  
18 received proof of compliance with any of these conditions.

19 Please provide proof of compliance by August 15, 2022. Failure to provide proof of  
20 compliance by the due date specified may result in further action, including, but not limited to,  
21 referral for citation and fine.”

22 Staff Services Manager I Borja’s letter stated that if Respondent had any questions  
23 Respondent could contact her directly at the phone number she provided or by email at her email  
24 address which she provided.

25 97. On August 25, 2022, Staff Services Manager I Borja sent Respondent a non-practice  
26 letter via certified mail which stated Respondent was not in compliance with Condition 23 of his  
27 probation. Staff Services Manager I Borja’s August 25, 2022, non-practice letter stated in  
28 relevant portion:

1       “Pursuant to your Probation Order, Condition 23 -Non-Practice While on Probation, 2nd  
2 paragraph –

3       *‘In the event Respondent's period of non-practice while on probation exceeds 18 calendar*  
4 *months, Respondent shall successfully complete the Federation of State Medical Board's Special*  
5 *Purpose Examination, or, at the Board's discretion, a clinical competence assessment program*  
6 *that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model*  
7 *Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.”*

8       *Respondent's period of non-practice while on probation shall not exceed two (2) years.*  
9 [emphasis in original]’

10       “On March 8, 2020, your non-practice while on probation had exceeded 18 calendar  
11 months. I informed you in a letter dated April 18, 2022.

12       “In addition, on January 11, 2022, your period of non-practice while on probation has  
13 exceeded two (2) years. Therefore, you are in violation of your probation order and your  
14 California medical license is subject to revocation.

15       “The Board may seek disciplinary action for this violation of probation. Please contact the  
16 Board immediately if your non-practice status has changed. If you are currently practicing  
17 medicine in California, please provide information about your employment status.

18       “As a reminder that you are required to notify the Medical Board immediately in writing  
19 [emphasis in original] of any changes to your name, residence or business address, and telephone  
20 number(s). Failure to comply with this condition of your probation may result in further discipline  
21 of your license.”

22       Staff Services Manager I Borja’s letter stated “Feel free to contact me with any questions or  
23 concerns you may have.”

24       98. Respondent is in violation of Probation Condition 23 as a result of his continuing  
25 failure to enroll in SPEX.

26                   **FIFTH CAUSE TO REVOKE PROBATION**

27                   **(Probation Non-Practice Period Exceeding Two Years)**

28       99. At all times after the effective date of Respondent's probation, Condition 23 of

1 Respondent's Probation Order stated in relevant portion:

2 "Respondent shall notify the Board or its designee in writing within 15 calendar days of any  
3 periods of non-practice lasting more than 30 calendar days and within 15 calendar days of  
4 Respondent's return to practice. Non-practice is defined as any period of time Respondent is not  
5 practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at  
6 least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other  
7 activity as approved by the Board. If Respondent resides in California and is considered to be in  
8 non-practice, Respondent shall comply with all terms and conditions of probation. . .

9 Respondent's period of non-practice while on probation shall not exceed two (2) years."

10 100. At all times after the effective date of Respondent's probation, Condition 25 of  
11 Respondent's Probation Order stated:

12 "VIOLATION OF PROBATION. Failure to fully comply with any term or condition of  
13 probation is a violation of probation. If Respondent violates probation in any respect, the Board,  
14 after giving Respondent notice and the opportunity to be heard, may revoke probation and carry  
15 out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or  
16 an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
17 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
18 the matter is final."

19 101. Respondent's probation is subject to revocation because he failed to comply with  
20 Probation Condition 23, referenced above. The facts and circumstances regarding this violation  
21 are as follows:

22 102. Effective September 8, 2017, Respondent's Physician's and Surgeon's Certificate was  
23 placed on probation for a period of seven (7) years with certain terms and conditions. Effective  
24 September 8, 2017, pursuant to Probation Condition 1 Respondent was suspended from the  
25 practice of medicine for one year.

26 103. Respondent was on probation for 21 months, 21 days, from September 9, 2018, [the  
27 day after his one year suspension term ended] through August 7, 2020, the effective date of the  
28

1 Board's Default Decision for his failure to timely respond to the filing of the petition to revoke  
2 probation.

3 104. Prior to the effective date of the Default Decision Respondent had been on probation  
4 for 18 months in a non-practice status as of March 9, 2020. Respondent was on probation for 21  
5 months, 21 days, from September 9, 2018, [the day after his one year suspension term ended]  
6 through August 7, 2020, the effective date of the Board's Default Decision for his failure to  
7 timely respond to the filing of the petition to revoke probation.

8 105. Respondent was not on probation from August 7, 2020 through December 10, 2021,  
9 when Respondent was returned to probationary status after Respondent's Writ to overturn the  
10 Board's Default Decision was granted. Respondent was placed back on probation on December  
11 10, 2021, and his period of non-practice while on probation has exceeded two years.

12 106. Because Respondent's period of non-practice while on probation has exceeded two  
13 years Respondent is in violation of Probation Condition 23 of his probation order and his  
14 California medical license is subject to revocation.

15 **SIXTH CAUSE TO REVOKE PROBATION**

16 **(Failure to Enroll in Ethics Course)**

17 107. At all times after the effective date of Respondent's probation, Condition 2 of  
18 Respondent's Probation Order stated:

19 "CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days  
20 of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment  
21 program approved in advance by the Board or its designee. Respondent shall successfully  
22 complete the program not later than six (6) months after Respondent's initial enrollment unless  
23 the Board or its designee agrees in writing to an extension of that time.

24 "The program shall consist of a comprehensive assessment of Respondent's physical and  
25 mental health and the six general domains of clinical competence as defined by the Accreditation  
26 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to  
27 Respondent's current or intended area of practice. The program shall take into account data  
28 obtained from the pre-assessment, self-report forms and interview, and the Decision(s),

1 Accusation(s), and any other information that the Board or its designee deems relevant. The  
2 program shall require Respondent's on-site participation for a minimum of three (3) and no more  
3 than five (5) days as determined by the program for the assessment and clinical education  
4 evaluation. Respondent shall pay all expenses associated with the clinical competence  
5 assessment program.

6 "At the end of the evaluation, the program will submit a report to the Board or its designee  
7 which unequivocally states whether the Respondent has demonstrated the ability to practice  
8 safely and independently. Based on Respondent's performance on the clinical competence  
9 assessment, the program will advise the Board or its designee of its recommendation(s) for the  
10 scope and length of any additional educational or clinical training, evaluation or treatment for any  
11 medical condition or psychological condition, or anything else affecting Respondent's practice of  
12 medicine. Respondent shall comply with the program's recommendations.

13 "Determination as to whether Respondent successfully completed the clinical competence  
14 assessment program is solely within the program's jurisdiction.

15 "If Respondent fails to enroll, participate in, or successfully complete the clinical  
16 competence assessment program within the designated time period, Respondent shall receive a  
17 notification from the Board or its designee to cease the practice of medicine within three (3)  
18 calendar days after being so notified. The Respondent shall not resume the practice of medicine  
19 until enrollment or participation in the outstanding portions of the clinical competence assessment  
20 program have been completed. If the Respondent did not successfully complete the clinical  
21 competence assessment program, the Respondent shall not resume the practice of medicine until a  
22 final decision has been rendered on the accusation and/or a petition to revoke probation. The  
23 cessation of practice shall not apply to the reduction of the probationary time period.

24 "Within 60 days after Respondent has successfully completed the clinical competence  
25 assessment program, Respondent shall participate in a professional enhancement program  
26 approved in advance by the Board or its designee, which shall include quarterly chart review,  
27 semi-annual practice assessment, and semi-annual review of professional growth and education.  
28 Respondent shall participate in the professional enhancement program at Respondent's expense



1 during the term of probation, or until the Board or its designee determines that further  
2 participation is no longer necessary.”

3 108. Respondent's probation is subject to revocation because he failed to comply with  
4 Probation Condition 2, referenced above. The facts and circumstances regarding this violation  
5 are as follows:

6 109. On September 6, 2019, the Board filed the Petition to Revoke Probation against  
7 Respondent. The Board's Default Decision became effective on August 7, 2020.

8 110. On March 5, 2020, prior to the issuance of the Board's Default Decision which  
9 terminated Respondent's probation until the Respondent's Writ to overturn the Board's Default  
10 Decision was granted, probation inspector Onu sent Respondent a letter. The letter detailed  
11 Respondent's results from his attendance in the Physician Assessment and Clinical Education  
12 (PACE) Program required by Respondent's probationary terms and conditions. Probation  
13 inspector Onu's letter stated Respondent had successfully passed the PACE program.

14 111. Probation inspector Onu's letter provided Respondent with the PACE program  
15 recommendations: 1) Oversight/Proctoring; 2) Practice Monitor; 3) Improve history and physical  
16 examination skills; 4) Improve Knowledge; 5) Professionalism Course; 6) Ongoing Substance  
17 Abuse Treatment; 7) Ongoing Urine Toxicology Screening; 8) Psychiatric Treatment; and 9)  
18 Psychotherapy.

19 112. Probation inspector Onu's letter stated that neither PACE nor the Board could provide  
20 Respondent with a copy of the final report, but that either his attorney could request the report  
21 during discovery for the Petition to Revoke Probation matter or that Respondent could contact the  
22 PACE case manager to request feedback.

23 113. Probation inspector Onu's letter stated that the Board would allow Respondent 60  
24 days to complete the PACE recommendations and provide the Board with proof of compliance.

25 114. On February 11, 2022, Respondent reported to the Board's San Dimas Probation  
26 office for his scheduled quarterly interview. During that meeting Board Staff Services Manager I  
27 Borja reviewed each term and condition of his probation.

28 115. During the February 11, 2022, meeting with Respondent Board Staff Services

1 Manager I Borja discussed Respondent's probationary terms and conditions with regard to each  
2 of the PACE recommendations.

3 116. On February 14, 2022, Staff Services Manager I Borja sent Respondent a letter  
4 detailing each item from the PACE recommendations that they had discussed on February 11,  
5 2022. In that regard Staff Services Manager I Borja's letter stated in relevant portion:

6 "I informed you that you would need to retake the Ethics course since it has been almost  
7 two years since you took the course. . ."

8 Staff Services Manager I Borja's letter stated that if Respondent had any questions he could  
9 contact her directly at the phone number she provided or by email at her email address which she  
10 provided.

11 117. On May 27, 2022, Respondent reported to the Board's San Dimas Probation office  
12 for his scheduled quarterly interview. During that meeting Board Staff Services Manager I Borja  
13 reviewed certain terms and conditions of Respondent's probation with him.

14 118. On May 27, 2022, Staff Services Manager I Borja sent Respondent a letter detailing  
15 each item they had discussed. Staff Services Manager I Borja's letter stated in relevant portion:

16 "We went over the recommendation for a professionalism program (Ethics) which came  
17 from the Clinical Competence Assessment Program. You informed me that you had not enrolled.  
18 Please enroll by May 31, 2022."

19 Staff Services Manager I Borja's letter stated that if Respondent had any questions  
20 Respondent could contact her directly at the phone number she provided or by email at her email  
21 address which she provided.

22 119. On July 29, 2022, Respondent reported to the Board's San Dimas Probation office for  
23 his scheduled quarterly interview. During that meeting Board Staff Services Manager I Borja  
24 reviewed certain terms and conditions of Respondent's probation with him.

25 120. On August 1, 2022, Staff Services Manager I Borja sent Respondent a letter detailing  
26 each item they had discussed during their July 29, 2022, meeting. With regard to Probation  
27 Condition 2 Staff Services Manager I Borja stated:

28 "We went over the recommendation for a professionalism program (Ethics course) which

1 came from the Clinical Competence Assessment Program. You informed me that you had not  
2 enrolled because you had already taken this course. We discussed the fact that you had attended  
3 the initial 2-day Ethics course with Professional Boundaries Inc. (PBI) on January 19-20, 2018, to  
4 fulfill Condition #13. You attended the Clinical Competence Assessment Program from October  
5 28, 2019 through November 1, 2019. Their report was dated February 24, 2020, and one of their  
6 recommendations was that you be required to participate in a professionalism course addressing  
7 physician professionalism. Since their recommendation was given after you had already taken an  
8 Ethics course two years prior, the Board would require you to take the course again. Please enroll  
9 by **August 15, 2022**. [emphasis in original]"

10 121. Respondent is in violation of Probation Condition 2 as a result of his continuing  
11 failure to enroll in the requisite Ethics course.

12 **SEVENTH CAUSE TO REVOKE PROBATION**

13 **(Failure to Complete the Clinical Competence Assessment Program Recommendations –**  
14 **Proof of Weekly Attendance at 12-Step Substance Abuse Program)**

15 122. At all times after the effective date of Respondent's probation, Condition 2 of  
16 Respondent's Probation Order stated:

17 **"CLINICAL COMPETENCE ASSESSMENT PROGRAM.** Within 60 calendar days  
18 of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment  
19 program approved in advance by the Board or its designee. Respondent shall successfully  
20 complete the program not later than six (6) months after Respondent's initial enrollment unless  
21 the Board or its designee agrees in writing to an extension of that time.

22 The program shall consist of a comprehensive assessment of Respondent's physical and  
23 mental health and the six general domains of clinical competence as defined by the Accreditation  
24 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to  
25 Respondent's current or intended area of practice. The program shall take into account data  
26 obtained from the pre-assessment, self-report forms and interview, and the Decision(s),  
27 Accusation(s), and any other information that the Board or its designee deems relevant. The  
28 program shall require Respondent's on-site participation for a minimum of three (3) and no more

1 than five (5) days as determined by the program for the assessment and clinical education  
2 evaluation. Respondent shall pay all expenses associated with the clinical competence  
3 assessment program.

4 At the end of the evaluation, the program will submit a report to the Board or its designee  
5 which unequivocally states whether the Respondent has demonstrated the ability to practice  
6 safely and independently. Based on Respondent's performance on the clinical competence  
7 assessment, the program will advise the Board or its designee of its recommendation(s) for the  
8 scope and length of any additional educational or clinical training, evaluation or treatment for any  
9 medical condition or psychological condition, or anything else affecting Respondent's practice of  
10 medicine. Respondent shall comply with the program's recommendations.

11 Determination as to whether Respondent successfully completed the clinical competence  
12 assessment program is solely within the program's jurisdiction.

13 If Respondent fails to enroll, participate in, or successfully complete the clinical  
14 competence assessment program within the designated time period, Respondent shall receive a  
15 notification from the Board or its designee to cease the practice of medicine within three (3)  
16 calendar days after being so notified. The Respondent shall not resume the practice of medicine  
17 until enrollment or participation in the outstanding portions of the clinical competence assessment  
18 program have been completed. If the Respondent did not successfully complete the clinical  
19 competence assessment program, the Respondent shall not resume the practice of medicine until a  
20 final decision has been rendered on the accusation and/or a petition to revoke probation. The  
21 cessation of practice shall not apply to the reduction of the probationary time period.

22 Within 60 days after Respondent has successfully completed the clinical competence  
23 assessment program, Respondent shall participate in a professional enhancement program  
24 approved in advance by the Board or its designee, which shall include quarterly chart review,  
25 semi-annual practice assessment, and semi-annual review of professional growth and education.  
26 Respondent shall participate in the professional enhancement program at Respondent's expense  
27 during the term of probation, or until the Board or its designee determines that further  
28 participation is no longer necessary."

1 123. Respondent's probation is subject to revocation because he failed to comply with  
2 Probation Condition 2, referenced above. The facts and circumstances regarding this violation  
3 are as follows:

4 124. On September 6, 2019, the Board filed the Petition to Revoke Probation against  
5 Respondent. The Board's Default Decision became effective on July 30, 2020. On January 27,  
6 2022, Respondent was returned to probationary status after Respondent's Writ to overturn the  
7 Board's Default Decision was granted.

8 125. On March 5, 2020, prior to the issuance of the Board's Default Decision which  
9 terminated Respondent's probation until the Court granted Respondent's Writ and overturned the  
10 Default Decision, probation inspector Onu sent Respondent a letter. The letter detailed  
11 Respondent's results from his attendance in the Physician Assessment and Clinical Education  
12 (PACE) Program required by Respondent's probationary terms and conditions. Probation  
13 inspector Onu's letter stated Respondent had successfully passed the PACE program.

14 126. Probation inspector Onu's letter provided Respondent with the PACE program  
15 recommendations: 1) Oversight/Proctoring; 2) Practice Monitor; 3) Improve history and physical  
16 examination skills; 4) Improve Knowledge; 5) Professionalism Course; 6) Ongoing Substance  
17 Abuse Treatment; 7) Ongoing Urine Toxicology Screening; 8) Psychiatric Treatment; and 9)  
18 Psychotherapy.

19 127. Probation inspector Onu's letter stated that neither PACE nor the Board could provide  
20 Respondent with a copy of the final report, but that either his attorney could request the report  
21 during discovery for the Petition to Revoke Probation matter or that Respondent could contact the  
22 PACE case manager to request feedback.

23 128. Probation inspector Onu's letter stated that the Board would allow Respondent 60  
24 days to complete the PACE recommendations and provide the Board with proof of compliance.

25 129. On February 11, 2022, Respondent reported to the Board's San Dimas Probation  
26 office for his scheduled quarterly interview. During that meeting Board Staff Services Manager I  
27 Borja reviewed each term and condition of his probation.

28 130. During the February 11, 2022, meeting with Respondent Board Staff Services

1 Manager I Borja discussed Respondent's probationary terms and conditions with regard to each  
2 of the PACE recommendations.

3 131. On February 14, 2022, Staff Services Manager I Borja sent Respondent a letter  
4 detailing each item from the PACE recommendations that they had discussed on February 11,  
5 2022. In that regard Staff Services Manager I Borja's letter stated in relevant portion:

6 "[sic] Ongoing Substance Abuse Treatment-this is a 12-step program. You mentioned that  
7 you attend AA weekly. I have enclosed a form that needs to be submitted at the end of each  
8 month indicating the dates you attended AA meetings."

9 Staff Services Manager I Borja's letter stated that if Respondent had any questions  
10 Respondent could contact her directly at the phone number she provided or by email at her email  
11 address which she provided.

12 132. On May 27, 2022, Respondent reported to the Board's San Dimas Probation office  
13 for his scheduled quarterly interview. During that meeting Board Staff Services Manager I Borja  
14 reviewed certain terms and conditions of Respondent's probation with him.

15 133. On July 29, 2022, Respondent reported to the Board's San Dimas Probation office for  
16 his scheduled quarterly interview. During that meeting Board Staff Services Manager I Borja  
17 reviewed certain terms and conditions of Respondent's probation with him.

18 134. On August 24, 2022, Staff Services Manager I Borja sent Respondent a "non-  
19 compliance" letter stating Respondent was not in compliance with Condition 2 of his probation.  
20 Staff Services Manager I Borja's letter stated:

21 "Re: Condition #2 - Clinical Competence Assessment Program – Recommended 12-step  
22 based substance abuse recovery program (AA meetings)

23 Dear Dr. Wilbur:

24 Per your Medical Board of California (Board) Decision and Order, you were required to  
25 complete the recommendations from the Clinical Competence Assessment Program. One of those  
26 recommendations was to attend weekly 12-step based substance abuse recovery program (AA  
27 meetings) and submit the completed form monthly, by the 10th of the new month. Please provide  
28 proof of your compliance with the weekly AA meeting recommendation by August 26, 2022.

1 You were instructed to submit the completed form monthly by the 10th of the new month. I have  
2 not received the completed form for July, which was due by August 10, 2022. As of the date of  
3 this letter, the Board has not received proof of compliance with this recommendation.

4 Please provide proof of compliance by August 26, 2022. Failure to provide proof of  
5 compliance by the due date specified may result in further action, including, but not limited to,  
6 referral for citation and fine.”

7 135. Staff Services Manager I Borja’s letter stated that if Respondent had any questions  
8 Respondent could contact her directly at the phone number she provided or by email at her email  
9 address which she provided.

10 136. Respondent has failed to provide proof of weekly attendance at a 12-Step Substance  
11 Abuse Program and remains in violation of Conditions 2 of his probation.

12 **EIGHTH CAUSE TO REVOKE PROBATION**

13 **(Failure to Complete the Clinical Competence Assessment Program)**

14 137. At all times after the effective date of Respondent's probation, Condition 2 of  
15 Respondent’s Probation Order stated:

16 **“CLINICAL COMPETENCE ASSESSMENT PROGRAM.** Within 60 calendar days  
17 of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment  
18 program approved in advance by the Board or its designee. Respondent shall successfully  
19 complete the program not later than six (6) months after Respondent’s initial enrollment unless  
20 the Board or its designee agrees in writing to an extension of that time.

21 The program shall consist of a comprehensive assessment of Respondent’s physical and  
22 mental health and the six general domains of clinical competence as defined by the Accreditation  
23 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to  
24 Respondent’s current or intended area of practice. The program shall take into account data  
25 obtained from the pre-assessment, self-report forms and interview, and the Decision(s),  
26 Accusation(s), and any other information that the Board or its designee deems relevant. The  
27 program shall require Respondent’s on-site participation for a minimum of three (3) and no more  
28 than five (5) days as determined by the program for the assessment and clinical education

1 evaluation. Respondent shall pay all expenses associated with the clinical competence  
2 assessment program.

3 At the end of the evaluation, the program will submit a report to the Board or its designee  
4 which unequivocally states whether the Respondent has demonstrated the ability to practice  
5 safely and independently. Based on Respondent's performance on the clinical competence  
6 assessment, the program will advise the Board or its designee of its recommendation(s) for the  
7 scope and length of any additional educational or clinical training, evaluation or treatment for any  
8 medical condition or psychological condition, or anything else affecting Respondent's practice of  
9 medicine. Respondent shall comply with the program's recommendations.

10 Determination as to whether Respondent successfully completed the clinical competence  
11 assessment program is solely within the program's jurisdiction.

12 If Respondent fails to enroll, participate in, or successfully complete the clinical  
13 competence assessment program within the designated time period, Respondent shall receive a  
14 notification from the Board or its designee to cease the practice of medicine within three (3)  
15 calendar days after being so notified. The Respondent shall not resume the practice of medicine  
16 until enrollment or participation in the outstanding portions of the clinical competence assessment  
17 program have been completed. If the Respondent did not successfully complete the clinical  
18 competence assessment program, the Respondent shall not resume the practice of medicine until a  
19 final decision has been rendered on the accusation and/or a petition to revoke probation. The  
20 cessation of practice shall not apply to the reduction of the probationary time period.

21 Within 60 days after Respondent has successfully completed the clinical competence  
22 assessment program, Respondent shall participate in a professional enhancement program  
23 approved in advance by the Board or its designee, which shall include quarterly chart review,  
24 semi-annual practice assessment, and semi-annual review of professional growth and education.  
25 Respondent shall participate in the professional enhancement program at Respondent's expense  
26 during the term of probation, or until the Board or its designee determines that further  
27 participation is no longer necessary."

28 138. At all times after the effective date of Respondent's probation, Condition 25 of



1 Respondent's Probation Order stated:

2 "VIOLATION OF PROBATION. Failure to fully comply with any term or condition of  
3 probation is a violation of probation. If Respondent violates probation in any respect, the Board,  
4 after giving Respondent notice and the opportunity to be heard, may revoke probation and carry  
5 out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or  
6 an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
7 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
8 the matter is final."

9 139. At all times after the effective date of Respondent's probation, Condition 23 of  
10 Respondent's Probation Order stated in relevant portion:

11 "NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its  
12 designee in writing within 15 calendar days of any periods of non-practice lasting more than 30  
13 calendar days and within 15 calendar days of Respondent's return to practice. None practice is  
14 defined as any period of time Respondent is not practicing medicine as defined in Business and  
15 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct  
16 patient care, clinical activity or teaching, or other activity as approved by the Board. . .

17 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
18 months, Respondent shall successfully complete the Federation of State Medical Board's Special  
19 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
20 that meets the criteria of Condition 18 of the current version of the Board's 'Manual of Model  
21 Disciplinary Orders and Disciplinary Guidelines' prior to resuming the practice of medicine . . .

22 Periods of non-practice for a Respondent residing outside of California will relieve  
23 Respondent of the responsibility to comply with the probationary terms and conditions with the  
24 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
25 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
26 Controlled Substances; and Biological Fluid Testing."

27 140. Respondent's probation is subject to revocation because he failed to comply with  
28 Probation Conditions 2, 25, and 23 referenced above. The facts and circumstances regarding this

violation are as follows:

141. On September 6, 2019, the Board filed the Petition to Revoke Probation against Respondent. The Board's Default Decision became effective on July 30, 2020. On January 27, 2022, Respondent was returned to probationary status after Respondent's Writ to overturn the Board's Default Decision was granted.

142. On March 5, 2020, prior to the issuance of the Board's Default Decision which terminated Respondent's probation until the Court granted Respondent's Writ and overturned the Default Decision, probation inspector Onu sent Respondent a letter. The letter detailed Respondent's results from his attendance in the Physician Assessment and Clinical Education (PACE) Program required by Respondent's probationary terms and conditions. Probation inspector Onu's letter stated Respondent had successfully passed the PACE program.

143. Probation inspector Onu's letter stated that neither PACE nor the Board could provide Respondent with a copy of the final report, but that either his attorney could request the report during discovery for the Petition to Revoke Probation matter or that Respondent could contact the PACE case manager to request feedback.

144. Probation inspector Onu's letter stated that the Board would allow Respondent 60 days to complete the PACE recommendations and provide the Board with proof of compliance.

145. On February 11, 2022, Respondent reported to the Board's San Dimas Probation office for his scheduled quarterly interview. During that meeting Board Staff Services Manager I Borja reviewed each term and condition of his probation.

146. During the February 11, 2022, meeting with Respondent Board Staff Services Manager I Borja discussed Respondent's probationary terms and conditions with regard to each of the PACE recommendations.

147. On February 14, 2022, Staff Services Manager I Borja sent Respondent a letter detailing each item from the PACE recommendations that they had discussed during his February 11, 2022, scheduled quarterly interview. With regard to Probation Condition 23 Staff Services Manager I Borja repeated:

"If you reside in California and you are considered to be in non-practice, you shall comply

1 with all terms and conditions of probation. . . You have been in non-practice status since your  
2 effective date. I pointed out the part in your Decision which reads, 'If Respondent resides in  
3 California and is considered to be in non-practice, Respondent shall comply with all terms and  
4 conditions of probation.'"

5 148. In the February 14, 2022, letter Staff Services Manager I Borja included the details of  
6 what Respondent was responsible to do to remain in compliance with Probation Condition 2 as  
7 follows:

8 "We went over each recommendation. I informed you that once you start working you will  
9 need a proctor (which is direct observation), a physician who will have to be with you side by  
10 side for at minimum your first 50 cases. I informed you that you would need to nominate  
11 someone once you start working.

12 "Practice monitor - I provided you the nomination form for a practice monitor, who needs  
13 to be in your same specialty. Improve history and physical examination skills. I asked you to  
14 review and study the website listed on the letter and to let me know by email once you have  
15 reviewed the website. Improve knowledge -you should review the website and let me know by  
16 email once you have reviewed this website. You should also obtain double the annual CME  
17 hours. At least 50 per year, for each year remaining of your probation.

18 "Professionalism Course - I informed you that you would need to retake the Ethics course  
19 since it has been almost two years since you took the course and attended the Clinical  
20 Competence Assessment Program. Ongoing Substance Abuse Treatment-this is a 12-step  
21 program. You mentioned that you attend AA weekly. I have enclosed a form that needs to be  
22 submitted at the end of each month indicating the dates you attended AA meetings. Ongoing  
23 Urine Toxicology Screening, this would be your testing with FSSolutions.

24 "Psychiatric Treatment - You mentioned that you are still seeing Dr. A [redacted in  
25 pleading] monthly. I will need quarterly reports. His next report is due by April 10, 2022.  
26 [emphasis in original]

1       “Psychotherapy - You mentioned that you are still seeing Dr. B [redacted in pleading]  
2 every other week. I will need quarterly reports. His next report is due by April 10, 2022.  
3 [emphasis in original]”

4       149. In the February 14, 2022, letter Staff Services Manager I Borja also referenced  
5 Probation Condition 25: “Pursuant to Condition #25 - Violation of Probation - Failure to fully  
6 comply with any term or condition of probation is a violation of probation.”

7       Staff Services Manager I Borja’s letter stated that if Respondent had any questions  
8 Respondent could contact her directly at the phone number she provided or by email at her email  
9 address which she provided.

10       150. On May 27, 2022, Respondent reported to the Board’s San Dimas Probation office  
11 for his scheduled quarterly interview. During that meeting Board Staff Services Manager I Borja  
12 reviewed certain terms and conditions of Respondent’s probation with him.

13       151. On May 27, 2022, Staff Services Manager I Borja sent Respondent a letter detailing  
14 each item they had discussed during his May 27, 2022, scheduled quarterly interview. Included  
15 in the letter were details of what Respondent was responsible to do to remain in compliance with  
16 Probation Condition 2 and the various dates by which Respondent was to provide the information  
17 to the Board.

18       152. On August 24, 2022, Staff Services Manager I Borja sent Respondent a “non-  
19 compliance” letter stating Respondent was not in compliance with Conditions 2 and 23 of his  
20 probation. Staff Services Manager I Borja’s letter stated in part:

21       “Re: Condition #2 - Clinical Competence Assessment Program – Recommended  
22 Improve history and physical exam skills, Improve knowledge, Ethics, and Psychiatric Treatment

23       “Per your Medical Board of California (Board) Decision and Order, you were required to  
24 complete the recommendations from the Clinical Competence Assessment Program, which are  
25 improve history and physical exam skills, improve knowledge, enroll in Ethics, 12-step based  
26 substance abuse recovery program (AA meetings), and Psychiatric Treatment. Please provide  
27 proof of your compliance with all recommendations by August 29, 2022. [emphasis in original]  
28

1       “Please provide proof of compliance by August 29, 2022. [emphasis in original] Failure to  
2 provide proof of compliance by the due date specified may result in further action, including, but  
3 not limited to, referral for citation and fine.”

4       153. Staff Services Manager I Borja’s letter stated that if Respondent had any questions  
5 Respondent could contact her directly at the phone number she provided or by email at her email  
6 address which she provided.

7       154. Respondent has failed to provide proof of completion of recommendations made by  
8 the Clinical Competence Assessment Program and remains in violation of Probation Conditions 2  
9 and 23.

#### 10                                   **DISCIPLINE CONSIDERATIONS**

11       155. To determine the degree of discipline, if any, to be imposed on Respondent,  
12 Complainant alleges that in a disciplinary action entitled, “*In the Matter of the First Amended*  
13 *Accusation Against Benjamin Stuart Wilbur, M.D.*,” Case No. 800-2015-016182, the Medical  
14 Board of California, issued a decision, effective September 8, 2017, in which Respondent's  
15 Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and  
16 Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of seven  
17 (7) years with certain terms and conditions. The 2017 Decision is now final and is incorporated  
18 by reference as if fully set forth.

19       156. To determine the degree of discipline, if any, to be imposed on Respondent,  
20 Complainant alleges that on or about April 1, 2016, in a prior disciplinary action entitled, *In the*  
21 *Matter of the Interim Suspension Order Against Benjamin Stuart Wilbur, M.D.*, before the  
22 Medical Board of California, in Case No. 800-2015-016182, Respondent's license was suspended.  
23 That decision is now final and is incorporated by reference as if fully set forth.

24       157. To determine the degree of discipline, if any, to be imposed on Respondent,  
25 Complainant alleges that on or about October 21, 2015, in a prior criminal proceeding entitled,  
26 *People of the State of California v. Benjamin Stuart Wilbur*, in San Bernardino Superior Court,  
27 Case Number FWVI 503800, an Order was issued pursuant to Penal Code section 23 restricting  
28 Respondent from practicing medicine during the pendency of the criminal action.

1           158. To determine the degree of discipline, if any, to be imposed on Respondent,  
2 Complainant alleges that on or about January 13, 2016, in a prior criminal proceeding entitled,  
3 *People of the State of California v. Benjamin Stuart Wilbur*, in San Bernardino Superior Court,  
4 Case Number FWVI 503800, Respondent was convicted for violating Health and Safety Code  
5 section 11370.1, subdivision (a) [unlawful possession of a controlled substance], as a felony.  
6 Respondent was placed on probation for three years and, inter alia, ordered to serve 279 days in a  
7 local jail and to pay fines and make restitution. The record of the criminal proceeding is  
8 incorporated as if fully set forth.

9           159. To determine the degree of discipline, if any, to be imposed on Respondent,  
10 Complainant alleges that on or about May 18, 2016, in a prior criminal proceeding entitled,  
11 *People of the State of California v. Benjamin Stuart Wilbur*, in San Bernardino Superior Court,  
12 Case Number RIF1502537, Respondent was convicted for violating Vehicle Code section 10851,  
13 subdivision (a) [unlawful taking or driving of another's vehicle], as a misdemeanor. Respondent  
14 was placed on probation for three years and, inter alia, ordered to pay fines and make restitution.  
15 The record of the criminal proceeding is incorporated as if fully set forth.

16           160. To determine the degree of discipline, if any, to be imposed on Respondent,  
17 Complainant alleges that on November 14, 2017, the Medical Board of California issued Citation  
18 Number 800-2017-038448 to Respondent in the amount of \$350.00 for his violation of his  
19 Probation Order terms and conditions.

20           161. To determine the degree of discipline, if any, to be imposed on Respondent,  
21 Complainant alleges that on November 16, 2018, the Medical Board of California issued Citation  
22 Number 800-2018-049193 to Respondent in the amount of \$700.00 for his violation of his  
23 Probation Order terms and conditions.

24 //

25 //

26 //

27

28

1 PRAYER

2 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Medical Board of California issue a decision:

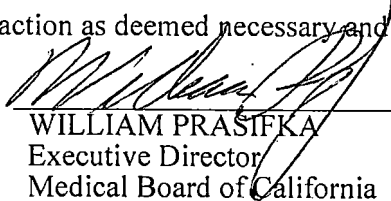
4 1. Revoking the probation that was granted by the Medical Board of California in Case  
5 No. 800-2015-016182 and imposing the disciplinary order that was stayed thereby revoking  
6 Physician's and Surgeon's Certificate No. A 92956 issued to Respondent Benjamin Stuart Wilbur,  
7 M.D.;

8 2. Revoking, suspending or denying approval of Respondent Benjamin Stuart Wilbur,  
9 M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and  
10 Advanced Practice Nurses;

11 3. Ordering Respondent Benjamin Stuart Wilbur, M.D. to pay the Medical Board of  
12 California the reasonable costs of the investigation and enforcement of this case, and, if placed on  
13 probation, the costs of probation monitoring; and

14 4. Taking such other and further action as deemed necessary and proper.

15 DATED: **SEP 22 2022**

16   
17 WILLIAM PRASIFKA  
18 Executive Director  
19 Medical Board of California  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant

23  
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## **Exhibit A**

Decision and Order

Medical Board of California Case No. 800-2015-016182



BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the First Amended )  
Accusation Against: )

BENJAMIN STUART WILBUR, M.D. )

Case No. 800-2015-016182

Physician's and Surgeon's )  
Certificate No. A 92956 )

Respondent )  
\_\_\_\_\_ )

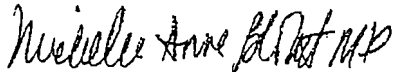
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 8, 2017.

IT IS SO ORDERED: August 11, 2017.

MEDICAL BOARD OF CALIFORNIA



\_\_\_\_\_  
Michelle Anne Bholat, M.D., Chair  
Panel B

1 XAVIER BECERRA  
Attorney General of California  
2 E. A. JONES III  
Supervising Deputy Attorney General  
3 WENDY WIDLUS  
Deputy Attorney General  
4 State Bar No. 82958  
California Department of Justice  
5 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
6 Telephone: (213) 897-2867  
Facsimile: (213) 897-9395  
7 E-mail: Wendy.Widlus@doj.ca.gov  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation  
12 Against:

13 **BENJAMIN STUART WILBUR, M.D.**  
14 **12672 Limonite Ave Ste 3E-235**  
**Corona, CA 92880-4201**

15 **Physician's and Surgeon's Certificate No.**  
16 **A92956,**

17 Respondent.

Case No. 800-2015-016182

OAH No. 2016061186

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

18  
19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
23 of California (Board). She brought this action solely in her official capacity and is represented in  
24 this matter by Xavier Becerra, Attorney General of the State of California, by Wendy Widlus,  
25 Deputy Attorney General.

26 2. Respondent Benjamin Stuart Wilbur, M.D. (Respondent) is represented in this  
27 proceeding by attorney Samuel F. Trussell, whose address is: 77-564 Country Club Drive Suite  
28 150, Palm Desert CA.

3. On or about September 30, 2005, the Board issued Physician's and Surgeon's Certificate No. A92956 to Benjamin Stuart Wilbur, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2015-016182, and will expire on May 31, 2017, unless renewed.

## JURISDICTION

4. First Amended Accusation No. 800-2015-016182 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on February 15, 2017. Respondent timely filed his Notice of Defense contesting the First Amended Accusation.

5. A copy of First Amended Accusation No. 800-2015-016182 is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2015-016182. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in First Amended Accusation No. 800-2015-016182.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

## CONTINGENCY

11. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

## DISCIPLINARY ORDER

**IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate No. A92956 issued to Respondent Benjamin Stuart Wilbur, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for seven (7) years on the following terms and conditions.

1. ACTUAL SUSPENSION. As part of probation, Respondent is suspended from the practice of medicine for one year beginning the effective date of this decision.

2. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 180 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical

1 competence assessment program approved in advance by the Board or its designee. Respondent  
2 shall successfully complete the program not later than six (6) months after Respondent's initial  
3 enrollment unless the Board or its designee agrees in writing to an extension of that time.

4 The program shall consist of a comprehensive assessment of Respondent's physical and  
5 mental health and the six general domains of clinical competence as defined by the Accreditation  
6 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to  
7 Respondent's current or intended area of practice. The program shall take into account data  
8 obtained from the pre-assessment, self-report forms and interview, and the Decision(s),  
9 Accusation(s), and any other information that the Board or its designee deems relevant. The  
10 program shall require Respondent's on-site participation for a minimum of three (3) and no more  
11 than five (5) days as determined by the program for the assessment and clinical education  
12 evaluation. Respondent shall pay all expenses associated with the clinical competence  
13 assessment program.

14 At the end of the evaluation, the program will submit a report to the Board or its designee  
15 which unequivocally states whether the Respondent has demonstrated the ability to practice  
16 safely and independently. Based on Respondent's performance on the clinical competence  
17 assessment, the program will advise the Board or its designee of its recommendation(s) for the  
18 scope and length of any additional educational or clinical training, evaluation or treatment for any  
19 medical condition or psychological condition, or anything else affecting Respondent's practice of  
20 medicine. Respondent shall comply with the program's recommendations.

21 Determination as to whether Respondent successfully completed the clinical competence  
22 assessment program is solely within the program's jurisdiction.

23 If Respondent fails to enroll, participate in, or successfully complete the clinical  
24 competence assessment program within the designated time period, Respondent shall receive a  
25 notification from the Board or its designee to cease the practice of medicine within three (3)  
26 calendar days after being so notified. The Respondent shall not resume the practice of medicine  
27 until enrollment or participation in the outstanding portions of the clinical competence assessment  
28 program have been completed. If the Respondent did not successfully complete the clinical

1 competence assessment program, the Respondent shall not resume the practice of medicine until a  
2 final decision has been rendered on the accusation and/or a petition to revoke probation. The  
3 cessation of practice shall not apply to the reduction of the probationary time period.

4 Within 60 days after Respondent has successfully completed the clinical competence  
5 assessment program, Respondent shall participate in a professional enhancement program  
6 approved in advance by the Board or its designee, which shall include quarterly chart review,  
7 semi-annual practice assessment, and semi-annual review of professional growth and education.  
8 Respondent shall participate in the professional enhancement program at Respondent's expense  
9 during the term of probation, or until the Board or its designee determines that further  
10 participation is no longer necessary.

11 Respondent must successfully complete the clinical competence assessment program prior  
12 to resuming the practice of medicine.

13 3. CONTROLLED SUBSTANCES - TOTAL RESTRICTION. Respondent  
14 shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as  
15 defined in the California Uniform Controlled Substances Act.

16 Respondent shall not issue an oral or written recommendation or approval to a patient or a  
17 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical  
18 purposes of the patient within the meaning of Health and Safety Code section 11362.5.

19 If Respondent forms the medical opinion, after an appropriate prior examination and a  
20 medical indication, that a patient's medical condition may benefit from the use of marijuana,  
21 Respondent shall so inform the patient and shall refer the patient to another physician who,  
22 following an appropriate prior examination and a medical indication, may independently issue a  
23 medically appropriate recommendation or approval for the possession or cultivation of marijuana  
24 for the personal medical purposes of the patient within the meaning of Health and Safety Code  
25 section 11362.5. In addition, Respondent shall inform the patient or the patient's primary  
26 caregiver that Respondent is prohibited from issuing a recommendation or approval for the  
27 possession or cultivation of marijuana for the personal medical purposes of the patient and that  
28 the patient or the patient's primary caregiver may not rely on Respondent's statements to legally

1 possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall  
2 fully document in the patient's chart that the patient or the patient's primary caregiver was so  
3 informed. Nothing in this condition prohibits Respondent from providing the patient or the  
4 patient's primary caregiver information about the possible medical benefits resulting from the use  
5 of marijuana.

6 4. CONTROLLED SUBSTANCES - SURRENDER OF DEA PERMIT.

7 Respondent is prohibited from practicing medicine until Respondent provides documentary proof  
8 to the Board or its designee that Respondent's DEA permit has been surrendered to the Drug  
9 Enforcement Administration for cancellation, together with any state prescription forms and all  
10 controlled substances order forms. Thereafter, Respondent shall not reapply for a new DEA  
11 permit without the prior written consent of the Board or its designee.

12 5. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS: Within

13 thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis  
14 thereafter as may be required by the Board or its designee, Respondent shall undergo and  
15 complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a  
16 Board-appointed board certified physician and surgeon. The examiner shall consider any  
17 information provided by the Board or its designee and any other information he or she deems  
18 relevant, and shall furnish a written evaluation report to the Board or its designee.

19 The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon  
20 who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of  
21 physicians and surgeons with substance abuse disorders, and is approved by the Board or its  
22 designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable  
23 professional standards for conducting substance abuse clinical diagnostic evaluations. The  
24 evaluator shall not have a current or former financial, personal, or business relationship with  
25 Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and  
26 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the  
27 evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a  
28 threat to himself or herself or others, and recommendations for substance abuse treatment,

1 practice restrictions, or other recommendations related to Respondent's rehabilitation and ability  
2 to practice safely. If the evaluator determines during the evaluation process that Respondent is a  
3 threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24)  
4 hours of such a determination.

5 In formulating his or her opinion as to whether Respondent is safe to return to either part-  
6 time or full-time practice and what restrictions or recommendations should be imposed, including  
7 participation in an inpatient or outpatient treatment program, the evaluator shall consider the  
8 following factors: Respondent's license type; Respondent's history; Respondent's documented  
9 length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use);  
10 Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical  
11 history and current medical condition; the nature, duration and severity of Respondent's  
12 substance abuse problem or problems; and whether Respondent is a threat to himself or herself or  
13 the public.

14 For all clinical diagnostic evaluations, a final written report shall be provided to the Board  
15 no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator  
16 requests additional information or time to complete the evaluation and report, an extension may  
17 be granted, but shall not exceed thirty (30) days from the date the evaluator was originally  
18 assigned the matter.

19 The Board shall review the clinical diagnostic evaluation report within five (5) business  
20 days of receipt to determine whether Respondent is safe to return to either part-time or full-time  
21 practice and what restrictions or recommendations shall be imposed on Respondent based on the  
22 recommendations made by the evaluator. Respondent shall not be returned to practice until he or  
23 she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating  
24 that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited  
25 substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of  
26 Regulations.

27 Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall  
28 not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic



1 evaluation, including any and all testing deemed necessary by the examiner, the Board or its  
2 designee, shall be borne by the licensee.

3 Respondent shall not engage in the practice of medicine until notified by the Board or its  
4 designee that he or she is fit to practice medicine safely. The period of time that Respondent is  
5 not practicing medicine shall not be counted toward completion of the term of probation.  
6 Respondent shall undergo biological fluid testing as required in this Decision at least two (2)  
7 times per week while awaiting the notification from the Board if he or she is fit to practice  
8 medicine safely.

9 Respondent shall comply with all restrictions or conditions recommended by the examiner  
10 conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified  
11 by the Board or its designee.

12 6. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent  
13 shall abstain completely from the personal use or possession of controlled substances as defined  
14 in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business  
15 and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does  
16 not apply to medications lawfully prescribed to Respondent by another practitioner for a bona  
17 fide illness or condition.

18 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent  
19 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone  
20 number; medication name, strength, and quantity; and issuing pharmacy name, address, and  
21 telephone number.

22 7. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain  
23 completely from the use of products or beverages containing alcohol.

24 8. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit  
25 to biological fluid testing, at Respondent's expense, upon request of the Board or its designee.  
26 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair  
27 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall  
28 make daily contact with the Board or its designee to determine whether biological fluid testing is

1 required. Respondent shall be tested on the date of the notification as directed by the Board or its  
2 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at  
3 any time, including weekends and holidays. Except when testing on a specific date as ordered by  
4 the Board or its designee, the scheduling of biological fluid testing shall be done on a random  
5 basis. The cost of biological fluid testing shall be borne by the Respondent.

6 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.  
7 During the second year of probation and for the duration of the probationary term, up to five (5)  
8 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no  
9 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing  
10 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number  
11 of random tests to the first-year level of frequency for any reason.

12 Prior to practicing medicine, Respondent shall contract with a laboratory or service,  
13 approved in advance by the Board or its designee, that will conduct random, unannounced,  
14 observed, biological fluid testing and meets all of the following standards:

15 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry  
16 Association or have completed the training required to serve as a collector for the United  
17 States Department of Transportation.

18 (b) Its specimen collectors conform to the current United States Department of  
19 Transportation Specimen Collection Guidelines.

20 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published  
21 by the United States Department of Transportation without regard to the type of test  
22 administered.

23 (d) Its specimen collectors observe the collection of testing specimens.

24 (e) Its laboratories are certified and accredited by the United States Department of Health  
25 and Human Services.

26 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day  
27 of receipt and all specimens collected shall be handled pursuant to chain of custody  
28 procedures. The laboratory shall process and analyze the specimens and provide legally

1 defensible test results to the Board within seven (7) business days of receipt of the  
2 specimen. The Board will be notified of non-negative results within one (1) business day  
3 and will be notified of negative test results within seven (7) business days.

4 (g) Its testing locations possess all the materials, equipment, and technical expertise  
5 necessary in order to test Respondent on any day of the week.

6 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens  
7 for the detection of alcohol and illegal and controlled substances.

8 (i) It maintains testing sites located throughout California.

9 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line  
10 computer database that allows the Respondent to check in daily for testing.

11 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff  
12 access to drug test results and compliance reporting information that is available 24 hours a  
13 day.

14 (l) It employs or contracts with toxicologists that are licensed physicians and have  
15 knowledge of substance abuse disorders and the appropriate medical training to interpret  
16 and evaluate laboratory biological fluid test results, medical histories, and any other  
17 information relevant to biomedical information.

18 (m) It will not consider a toxicology screen to be negative if a positive result is obtained  
19 while practicing, even if the Respondent holds a valid prescription for the substance.

20 Prior to changing testing locations for any reason, including during vacation or other travel,  
21 alternative testing locations must be approved by the Board and meet the requirements above.

22 The contract shall require that the laboratory directly notify the Board or its designee of  
23 non-negative results within one (1) business day and negative test results within seven (7)  
24 business days of the results becoming available. Respondent shall maintain this laboratory or  
25 service contract during the period of probation.

26 A certified copy of any laboratory test result may be received in evidence in any  
27 proceedings between the Board and Respondent.

28 If a biological fluid test result indicates Respondent has used, consumed, ingested, or

1 administered to himself or herself a prohibited substance, the Board shall order Respondent to  
2 cease practice and instruct Respondent to leave any place of work where Respondent is practicing  
3 medicine or providing medical services. The Board shall immediately notify all of Respondent's  
4 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or  
5 provide medical services while the cease-practice order is in effect.

6 A biological fluid test will not be considered negative if a positive result is obtained while  
7 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited  
8 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

9 After the issuance of a cease-practice order, the Board shall determine whether the positive  
10 biological fluid test is in fact evidence of prohibited substance use by consulting with the  
11 specimen collector and the laboratory, communicating with the licensee, his or her treating  
12 physician(s), other health care provider, or group facilitator, as applicable.

13 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the  
14 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

15 For purposes of this condition, the term "prohibited substance" means an illegal drug, a  
16 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by  
17 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been  
18 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

19 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited  
20 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the  
21 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to  
22 any other terms or conditions the Board determines are necessary for public protection or to  
23 enhance Respondent's rehabilitation.

24 9. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE.

25 Within thirty (30) calendar days of the effective date of this Decision, Respondent shall submit to  
26 the Board or its designee for prior approval as a worksite monitor, the name and qualifications of  
27 one or more licensed physician and surgeon, other licensed health care professional if no  
28 physician and surgeon is available, or, as approved by the Board or its designee, a person in a

1 position of authority who is capable of monitoring the Respondent at work.

2 The worksite monitor shall not have a current or former financial, personal, or familial  
3 relationship with Respondent, or any other relationship that could reasonably be expected to  
4 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its  
5 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite  
6 monitor, this requirement may be waived by the Board or its designee, however, under no  
7 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

8 The worksite monitor shall have an active unrestricted license with no disciplinary action  
9 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms  
10 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth  
11 by the Board or its designee.

12 Respondent shall pay all worksite monitoring costs.

13 The worksite monitor shall have face-to-face contact with Respondent in the work  
14 environment on as frequent a basis as determined by the Board or its designee, but not less than  
15 once per week; interview other staff in the office regarding Respondent's behavior, if requested  
16 by the Board or its designee; and review Respondent's work attendance.

17 The worksite monitor shall verbally report any suspected substance abuse to the Board and  
18 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected  
19 substance abuse does not occur during the Board's normal business hours, the verbal report shall  
20 be made to the Board or its designee within one (1) hour of the next business day. A written  
21 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and  
22 any other information deemed important by the worksite monitor shall be submitted to the Board  
23 or its designee within 48 hours of the occurrence.

24 The worksite monitor shall complete and submit a written report monthly or as directed by  
25 the Board or its designee which shall include the following: (1) Respondent's name and  
26 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)  
27 the worksite monitor's license number, if applicable; (4) the location or location(s) of the  
28 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the

names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance; (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by Respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

10. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he or she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing

Respondent's name, the group name, the date and location of the meeting, Respondent's attendance, and Respondent's level of participation and progress. The facilitator shall report any unexcused absence by Respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

11. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7) days of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff privileges.

12. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING LICENSEES. Failure to fully comply with any term or condition of probation is a violation of probation.

A. If Respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice order issued by the Board or its designee shall state that Respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a Respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he or she may do so.

1 (2) Increase the frequency of biological fluid testing.

2 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or  
3 other action as determined by the Board or its designee.

4 B. If Respondent commits a minor violation of probation as defined by section 1361.52,  
5 subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or  
6 more of the following actions:

7 (1) Issue a cease-practice order;

8 (2) Order practice limitations;

9 (3) Order or increase supervision of Respondent;

10 (4) Order increased documentation;

11 (5) Issue a citation and fine, or a warning letter;

12 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in  
13 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of  
14 Regulations, at Respondent's expense;

15 (7) Take any other action as determined by the Board or its designee.

16 C. Nothing in this Decision shall be considered a limitation on the Board's authority to  
17 revoke Respondent's probation if he or she has violated any term or condition of probation. If  
18 Respondent violates probation in any respect, the Board, after giving Respondent notice and the  
19 opportunity to be heard, may revoke probation and carry out the disciplinary order that was  
20 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed  
21 against Respondent during probation, the Board shall have continuing jurisdiction until the matter  
22 is final, and the period of probation shall be extended until the matter is final.

23 13. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60  
24 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism  
25 program, that meets the requirements of Title 16, California Code of Regulations (CCR) section  
26 1358.1. Respondent shall participate in and successfully complete that program. Respondent  
27 shall provide any information and documents that the program may deem pertinent. Respondent  
28 shall successfully complete the classroom component of the program not later than six (6) months



1 after Respondent's initial enrollment, and the longitudinal component of the program not later  
2 than the time specified by the program, but no later than one (1) year after attending the  
3 classroom component. The professionalism program shall be at Respondent's expense and shall  
4 be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

5 A professionalism program taken after the acts that gave rise to the charges in the  
6 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
7 or its designee, be accepted towards the fulfillment of this condition if the program would have  
8 been approved by the Board or its designee had the program been taken after the effective date of  
9 this Decision.

10 Respondent shall submit a certification of successful completion to the Board or its  
11 designee not later than 15 calendar days after successfully completing the program or not later  
12 than 15 calendar days after the effective date of the Decision, whichever is later.

13 14. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this  
14 Decision, Respondent shall submit to the Board or its designee for prior approval the name and  
15 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who  
16 has a doctoral degree in psychology and at least five years of postgraduate experience in the  
17 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall  
18 undergo and continue psychotherapy treatment, including any modifications to the frequency of  
19 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

20 The psychotherapist shall consider any information provided by the Board or its designee  
21 and any other information the psychotherapist deems relevant and shall furnish a written  
22 evaluation report to the Board or its designee. Respondent shall cooperate in providing the  
23 psychotherapist with any information and documents that the psychotherapist may deem  
24 pertinent.

25 Respondent shall have the treating psychotherapist submit quarterly status reports to the  
26 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric  
27 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of  
28 probation, Respondent is found to be mentally unfit to resume the practice of medicine without

1 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the  
2 period of probation shall be extended until the Board determines that Respondent is mentally fit  
3 to resume the practice of medicine without restrictions.

4 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

5 15. SOLO PRACTICE PROHIBITION. Respondent is prohibited from  
6 engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to,  
7 a practice where: 1) Respondent merely shares office space with another physician but is not  
8 affiliated for purposes of providing patient care, or 2) Respondent is the sole physician  
9 practitioner at that location.

10 If Respondent fails to establish a practice with another physician or secure employment in  
11 an appropriate practice setting within 60 calendar days of the effective date of this Decision,  
12 Respondent shall receive a notification from the Board or its designee to cease the practice of  
13 medicine within three (3) calendar days after being so notified. The Respondent shall not resume  
14 practice until an appropriate practice setting is established.

15 If, during the course of the probation, the Respondent's practice setting changes and the  
16 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent  
17 shall notify the Board or its designee within five (5) calendar days of the practice setting change.  
18 If Respondent fails to establish a practice with another physician or secure employment in an  
19 appropriate practice setting within 60 calendar days of the practice setting change, Respondent  
20 shall receive a notification from the Board or its designee to cease the practice of medicine within  
21 three (3) calendar days after being so notified. The Respondent shall not resume practice until an  
22 appropriate practice setting is established.

23 16. EDUCATION COURSE. Within 60 calendar days of the effective date of  
24 this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its  
25 designee for its prior approval educational program(s) or course(s) which shall not be less than 20  
26 hours per year, for each year of probation. The educational program(s) or course(s) shall be  
27 aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified.  
28 The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition

1 to the Continuing Medical Education (CME) requirements for renewal of licensure. Following  
2 the completion of each course, the Board or its designee may administer an examination to test  
3 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65  
4 hours of CME of which 20 hours were in satisfaction of this condition.

5 17. NOTIFICATION. Within seven (7) days of the effective date of this  
6 Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief  
7 of Staff or the Chief Executive Officer at every hospital where privileges or membership are  
8 extended to Respondent, at any other facility where Respondent engages in the practice of  
9 medicine, including all physician and locum tenens registries or other similar agencies, and to the  
10 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage  
11 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within  
12 15 calendar days.

13 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

14 18. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED  
15 PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician  
16 assistants and advanced practice nurses.

17 19. OBEY ALL LAWS. Respondent shall obey all federal, state and local  
18 laws, all rules governing the practice of medicine in California and remain in full compliance  
19 with any court ordered criminal probation, payments, and other orders.

20 20. QUARTERLY DECLARATIONS. Respondent shall submit quarterly  
21 declarations under penalty of perjury on forms provided by the Board, stating whether there has  
22 been compliance with all the conditions of probation.

23 Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
24 of the preceding quarter.

25 21. GENERAL PROBATION REQUIREMENTS.

26 Compliance with Probation Unit

27 Respondent shall comply with the Board's probation unit.

28 Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

22. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

23. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If

1 Respondent resides in California and is considered to be in non-practice, Respondent shall  
2 comply with all terms and conditions of probation. All time spent in an intensive training  
3 program which has been approved by the Board or its designee shall not be considered non-  
4 practice and does not relieve Respondent from complying with all the terms and conditions of  
5 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
6 on probation with the medical licensing authority of that state or jurisdiction shall not be  
7 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
8 period of non-practice.

9 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
10 months, Respondent shall successfully complete the Federation of State Medical Board's Special  
11 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
12 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
13 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

14 Respondent's period of non-practice while on probation shall not exceed two (2) years.

15 Periods of non-practice will not apply to the reduction of the probationary term.

16 Periods of non-practice for a Respondent residing outside of California will relieve  
17 Respondent of the responsibility to comply with the probationary terms and conditions with the  
18 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
19 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
20 Controlled Substances; and Biological Fluid Testing..

21 24. COMPLETION OF PROBATION. Respondent shall comply with all  
22 financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to  
23 the completion of probation. Upon successful completion of probation, Respondent's certificate  
24 shall be fully restored.

25 25. VIOLATION OF PROBATION. Failure to fully comply with any term or  
26 condition of probation is a violation of probation. If Respondent violates probation in any  
27 respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke  
28 probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to

1 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,  
2 the Board shall have continuing jurisdiction until the matter is final, and the period of probation  
3 shall be extended until the matter is final.

4           26.     LICENSE SURRENDER. Following the effective date of this Decision, if  
5 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
6 the terms and conditions of probation, Respondent may request to surrender his or her license.  
7 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
8 determining whether or not to grant the request, or to take any other action deemed appropriate  
9 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
10 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
11 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
12 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
13 application shall be treated as a petition for reinstatement of a revoked certificate.

14           27.     PROBATION MONITORING COSTS. Respondent shall pay the costs  
15 associated with probation monitoring each and every year of probation, as designated by the  
16 Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical  
17 Board of California and delivered to the Board or its designee no later than January 31 of each  
18 calendar year.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Samuel F. Trussell. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

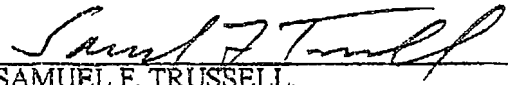
May 27, 2017

  
BENJAMIN STUART WILBUR, M.D.  
Respondent

I have read and fully discussed with Respondent BENJAMIN STUART WILBUR, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

5-29-2017

  
SAMUEL F. TRUSSELL,  
Attorney for Respondent

ENDORSEMENT


The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated:

5/30/2017

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
E. A. JONES III  
Supervising Deputy Attorney General

  
WENDY WIDLUS  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**First Amended Accusation No. 800-2015-016182**



1 XAVIER BECERRA  
Attorney General of California  
2 E. A. JONES III  
Supervising Deputy Attorney General  
3 EDWARD KIM  
Deputy Attorney General  
4 State Bar No. 195729  
California Department of Justice  
5 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
6 Telephone: (213) 897-7336  
Facsimile: (213) 897-9395  
7 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO, Feb. 15 20 17  
BY [Signature] ANALYST

8 BEFORE THE  
9 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
10 STATE OF CALIFORNIA

11 In the Matter of the First Amended Accusation  
Against:

12 BENJAMIN STUART WILBUR, M.D.  
13 12672 Limonite Avenue, Suite 3E-235  
14 Corona, CA 92880

15 Physician's and Surgeon's  
Certificate No. A-92956

16 Respondent.

Case No. 800-2015-016182

OAH No.

17 FIRST AMENDED  
18 ACCUSATION

19 Complainant alleges:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation solely in  
22 her official capacity as the Executive Director of the Medical Board of California, Department of  
Consumer Affairs.

23 2. On or about September 30, 2005, the Medical Board of California issued Physician's  
24 and Surgeon's Certificate Number A-92956 to Benjamin Stuart Wilbur, M.D. (Respondent). The  
25 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the  
26 charges brought herein and will expire on May 31, 2017, unless renewed.

27 JURISDICTION

28 3. This First Amended Accusation is brought before the Medical Board of California

1 (Board), Department of Consumer Affairs, under the authority of the following laws. All section  
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 2227 of the Code provides that a licensee who is found guilty under the  
4 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
5 one year, placed on probation and required to pay the costs of probation monitoring, or such other  
6 action taken in relation to discipline as the Board deems proper.

7 5. Section 2234 of the Code, states:

8 "The board shall take action against any licensee who is charged with unprofessional  
9 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not  
10 limited to, the following:

11 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
12 violation of, or conspiring to violate any provision of this chapter.

13 "(b) Gross negligence.

14 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or  
15 omissions. An initial negligent act or omission followed by a separate and distinct departure from  
16 the applicable standard of care shall constitute repeated negligent acts.

17 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate  
18 for that negligent diagnosis of the patient shall constitute a single negligent act.

19 "(2) When the standard of care requires a change in the diagnosis, act, or omission that  
20 constitutes the negligent act described in paragraph (1), including, but not limited to, a  
21 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the  
22 applicable standard of care, each departure constitutes a separate and distinct breach of the  
23 standard of care.

24 "(d) Incompetence.

25 "(e) The commission of any act involving dishonesty or corruption which is substantially  
26 related to the qualifications, functions, or duties of a physician and surgeon.

27 "(f) Any action or conduct which would have warranted the denial of a certificate.

28 "(g) The practice of medicine from this state into another state or country without meeting

1 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not  
2 apply to this subdivision. This subdivision shall become operative upon the implementation of the  
3 proposed registration program described in Section 2052.5.

4 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and  
5 participate in an interview by the board. This subdivision shall only apply to a certificate holder  
6 who is the subject of an investigation by the board.”

7 6. Section 2236 of the Code states:

8 “(a) The conviction of any offense substantially related to the qualifications, functions, or  
9 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this  
10 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive  
11 evidence only of the fact that the conviction occurred.

12 “(b) The district attorney, city attorney, or other prosecuting agency shall notify the  
13 Division of Medical Quality<sup>1</sup> of the pendency of an action against a licensee charging a felony  
14 or misdemeanor immediately upon obtaining information that the defendant is a licensee. The  
15 notice shall identify the licensee and describe the crimes charged and the facts alleged. The  
16 prosecuting agency shall also notify the clerk of the court in which the action is pending that the  
17 defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds  
18 a license as a physician and surgeon.

19 “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours  
20 after the conviction, transmit a certified copy of the record of conviction to the board. The  
21 division may inquire into the circumstances surrounding the commission of a crime in order to fix  
22 the degree of discipline or to determine if the conviction is of an offense substantially related to  
23 the qualifications, functions, or duties of a physician and surgeon.

24 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to  
25 be a conviction within the meaning of this section and Section 2236.1. The record of conviction  
26 shall be conclusive evidence of the fact that the conviction occurred.”

---

27 <sup>1</sup> Pursuant to Business and Professions Code section 2002, “Division of Medical Quality”  
28 or “Division” shall be deemed to refer to the Medical Board of California.

1           7.     Section 2239 of the Code states:

2           “(a) The use or prescribing for or administering to himself or herself, of any controlled  
3 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic  
4 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to  
5 any other person or to the public, or to the extent that such use impairs the ability of the licensee  
6 to practice medicine safely or more than one misdemeanor or any felony involving the use,  
7 consumption, or self-administration of any of the substances referred to in this section, or any  
8 combination thereof, constitutes unprofessional conduct. The record of the conviction is  
9 conclusive evidence of such unprofessional conduct.

10           “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is  
11 deemed to be a conviction within the meaning of this section. The Division of Medical Quality  
12 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing  
13 may order the denial of the license when the time for appeal has elapsed or the judgment of  
14 conviction has been affirmed on appeal or when an order granting probation is made suspending  
15 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4  
16 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of  
17 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,  
18 information, or indictment.”

19           8.     Section 822 of the Code, states:

20           “If a licensing agency determines that its licentiate's ability to practice his or her profession  
21 safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the  
22 licensing agency may take action by any one of the following methods:

23           “(a) Revoking the licentiate's certificate or license.

24           “(b) Suspending the licentiate's right to practice.

25           “(c) Placing the licentiate on probation.

26           “(d) Taking such other action in relation to the licentiate as the licensing agency in its  
27 discretion deems proper.

28           “The licensing agency shall not reinstate a revoked or suspended certificate or license until

1 it has received competent evidence of the absence or control of the condition which caused its  
2 action and until it is satisfied that with due regard for the public health and safety the person's  
3 right to practice his or her profession may be safely reinstated."

4 9. Section 2238 of the Code states:

5 "A violation of any federal statute or federal regulation or any of the statutes or regulations  
6 of this state regulating dangerous drugs or controlled substances constitutes unprofessional  
7 conduct."

8 10. Section 490 of the Code states, in pertinent part:

9 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
10 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
11 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
12 or profession for which the license was issued.

13 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
14 discipline a licensee for conviction of a crime that is independent of the authority granted under  
15 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
16 of the business or profession for which the licensee's license was issued.

17 ". . ."

18 11. Section 11170 of the Health and Safety Code states:

19 "No person shall prescribe, administer, or furnish a controlled substance for himself."

20 12. Section 11370.1. of the Health and Safety Code states:

21 "(a) Notwithstanding Section 11350 or 11377 or any other provision of law, every person  
22 who unlawfully possesses any amount of a substance containing cocaine base, a substance  
23 containing cocaine, a substance containing heroin, a substance containing methamphetamine, a  
24 crystalline substance containing phencyclidine, a liquid substance containing phencyclidine, plant  
25 material containing phencyclidine, or a hand-rolled cigarette treated with phencyclidine while  
26 armed with a loaded, operable firearm is guilty of a felony punishable by imprisonment in the  
27 state prison for two, three, or four years. As used in this subdivision, "armed with" means having  
28 available for immediate offensive or defensive use.

1 “(b) Any person who is convicted under this section shall be ineligible for diversion or  
2 deferred entry of judgment under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part  
3 2 of the Penal Code.”

4 13. California Code of Regulations, title 16, section 1360, states:

5 “For the purposes of denial, suspension or revocation of a license, certificate or permit  
6 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be  
7 considered to be substantially related to the qualifications, functions or duties of a person holding  
8 a license, certificate or permit under the Medical Practice Act if to a substantial degree it  
9 evidences present or potential unfitness of a person holding a license, certificate or permit to  
10 perform the functions authorized by the license, certificate or permit in a manner consistent with  
11 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the  
12 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
13 violation of, or conspiring to violate any provision of the Medical Practice Act.”

#### 14 **FACTUAL ALLEGATIONS**

##### 15 **August 2015 Arrest**

16 14. On or about August 7, 2015, Respondent drove a 2014 black Hyundai Sonata in the  
17 area of Foothill Blvd. and Baker Ave. where an Automatic License Plate Reader identified the  
18 vehicle. Upland Police Officers responded and searched the vehicle. During the search, the  
19 officers discovered several illicit items, including:

- 20 • a Ziploc style bag with a white crystal substance (identified as methamphetamine);
- 21 • a loaded Ruger .357 pistol (subsequently determined to be stolen);
- 22 • a speed loader;
- 23 • additional hollow point .357 ammunition;
- 24 • two plastic bags containing marijuana;
- 25 • 16 empty 2” x 2” plastic baggies;
- 26 • two digital scales;
- 27 • one lighter.

28 At the time of his arrest, Respondent admitted that “he uses some of [the methamphetamines] and

1 gives some of it to others.”

2 15. On or about October 9, 2015, in San Bernardino County Superior Court in case  
3 number FWV1503800, entitled *People vs. Benjamin Wilbur*, Respondent was charged with three  
4 felony counts (violations of Health and Safety Code sections 11379, subdivision (a), 11378 and  
5 11359) in a criminal complaint.

6 16. On or about October 13, 2015, in San Bernardino County Superior Court in case  
7 number FWV1503800, entitled *People vs. Benjamin Wilbur*, Respondent appeared at Superior  
8 Court and was served with a Notice of Appearance and Application for a Restriction on  
9 Respondent and accompanying papers pursuant to Penal Code section 23.

10 **October 2015 Arrest**

11 17. Respondent was arrested again on or about October, 13, 2015 – the same day as his  
12 appearance on his criminal matter. The facts and circumstances of his arrest are as follows:

13 18. Police officers of the Fontana Police Department whose responsibility was to  
14 investigate narcotic related crimes responded to 2025 E. Convention Center Way in the City of  
15 Ontario (Residence Inn) and conducted a traffic stop on the vehicle of a person who left a motel  
16 room. The male driving the vehicle, M.S., was found to be in possession of over six ounces of  
17 methamphetamine, over 100 oxycodone pills, and a loaded firearm. M.S. gave officers verbal  
18 consent to search his room which was rented under his name. As the officers spoke to two male  
19 individuals in the room, they heard a running shower in the bathroom upstairs. A third male was  
20 contacted as he exited the shower and identified as Respondent, who stated that the motel was not  
21 in his name but he had resided in the motel during the past few days with M.S. Respondent gave  
22 verbal, and later written, consent to search the motel room. Respondent identified his living area  
23 as the upstairs bedroom and bathroom. He said everything that was in that area belonged to him  
24 and everything in the other bedroom belonged to M.S.

25 19. During a search of the upstairs portion of the motel, a brown colored travel bag was  
26 located in the bathroom. In the bag was a box containing a 50 ml vile of Marcaine (also known as  
27 bupivacaine hydrochloride, an anesthetic (numbing medicine) used as a local anesthetic for a  
28 spinal block); a box containing 5 viles of 10 mg Lidocaine HCl (also known as xylocaine) and

1 lignocaine (a medication used to numb tissue in a specific area and to treat ventricular  
2 tachycardia); and a 40 mg vile of Depro-Medrol (an anti-inflammatory glucocorticoid for  
3 intramuscular, intra-articular, soft tissue or intralesional injection). On the floor next to the bed  
4 was an orange colored pill bottle (with the patient name, M.S.) and the prescription was for 120  
5 30 mg Oxycodone pills (a controlled opioid pain medication), with 106 pills inside of the  
6 container. Hidden inside of the box for Lidocaine was a 10 ml vile with "360" written on the top  
7 in marker and "Tri-Testbolone 360" on the label. The vile was labeled as containing a blend of  
8 Testosterone Enanthate, Testosterone Propionate and Trenbolone Acetate. All the ingredients in  
9 this vile were anabolic steroids and controlled substances which were widely sold on the black  
10 market for performance enhancing. In Respondent's bedroom was a black colored computer bag  
11 next to his bed. Inside of the bag were two clipboards which had prescriptions attached to them.  
12 Behind the prescriptions were forms relating to pain assessment and pain management. The  
13 doctor's name on the prescriptions was Respondent's own name. In the side pocket of the bag  
14 was court paperwork listing Respondent as the defendant in a criminal case in San Bernardino  
15 County, case number FWV1503800. In the last pocket of Respondent's bag were three hand  
16 written pieces of paper. One piece of paper had the price of Norco and Xanax as \$3 each and the  
17 price for somas as \$1 each. Each list had the amount multiplied by 120. The second piece of  
18 paper was yellow and was an accounts receivable ledger. The ledger had five names on it and  
19 under the column "Charges" had either 300 or 150. On a white notepad from the Residence Inn  
20 were five names with four having "\$300" next to it and two of those having "Paid" written next to  
21 it.

22       20. During the arrest, Respondent also made the following statement to the police.  
23 Respondent was a friend of M.S. who was also a patient of his for the past two years. Respondent  
24 treated M.S. for his chronic pain and had prescribed oxycodone and Norco. Respondent had been  
25 staying with M.S. the past few days because he did not have anywhere else to go. Respondent  
26 admitted to the possession of the steroids and stated that he did not have a valid prescription for  
27 the steroids and that they were not given to him by a licensed doctor. Respondent stated that  
28 instead of paying for the steroids he obtained illegally, he provided a "consultation" and script for



1 pain medications in exchange. Respondent also explained his consultation practice. He stated  
2 that he charged all new patients \$300 per consultation, and each patient who returned and did not  
3 have severe chronic pain was charged \$150 for follow-up visits and the patients who did have  
4 severe chronic pain were charged \$300. Respondent admitted that he never took x-rays or did  
5 any type of physical examinations, and that he would write prescriptions for large amounts of  
6 pain medications based on a verbal assessment.

7 21. Throughout his interaction with the police officers, Respondent appeared to be under  
8 the influence of narcotics and Respondent admitted to using methamphetamine and marijuana the  
9 previous night and stated that he had a valid medical marijuana recommendation. However, the  
10 police officers were unable to locate the medical marijuana recommendation to verify this claim.  
11 Respondent's demeanor appeared to change several times, going from very docile to excited and  
12 from not saying anything to speaking very rapidly. He also would drift off into deep thought and  
13 began to believe he was being set up by everybody.

#### 14 **January 2016 Conviction**

15 22. On or about October 15, 2015, in San Bernardino County Superior Court in case  
16 number FWV1503874, entitled *People vs. Benjamin Wilbur*, Respondent was charged with two  
17 felony counts for selling, furnishing, administering, giving away, transporting or importing a  
18 controlled substance in violation of Health and Safety Code section 11352, subdivision (a), and  
19 section 11379, subdivision (a). Suspect M.S. was also charged with multiple felony counts of  
20 drug related crimes.

21 23. On or about October 21, 2015, in San Bernardino County Superior Court in case  
22 number FWV1503800, entitled *People vs. Benjamin Wilbur*, the court signed an order ordering  
23 Respondent to cease and desist from practicing medicine during the pendency of his criminal  
24 action.

25 24. On or about January 13, 2016, the complaint was amended to add a violation of  
26 Health and Safety Code section 11370.1, subdivision (a), a felony (Count 4)[unlawful possession  
27 of a controlled substance], and Respondent was convicted, upon his plea of nolo contendere, of  
28 violating Count 4. The remaining charges were dismissed and in addition, as part of this plea

1 arrangement, the two counts felony charges against Respondent in case number FWV1503874  
2 were also dismissed.

3 25. On or about January 13, 2016, in San Bernardino County Superior Court in case  
4 number FWV1503800 Respondent was sentenced to serve 279 days in a San Bernardino County  
5 Jail Facility, and to a period of 36 months of probation, with terms and conditions, including,  
6 among other things, that Respondent report to a rehabilitation center, violate no law, report to a  
7 probation officer, neither possess nor control any dangerous or deadly weapons, attend AA  
8 meetings as directed, and pay fines and fees.

9 **March 2016 Interview**

10 26. On or about March 10, 2016, an investigator with the Department of Consumer  
11 Affairs interviewed Respondent. Initially he denied having ever used illicit drugs. Later, when  
12 confronted however, he admitted to having repeatedly used methamphetamines in 2015.

13 **April 2016 Interim Suspension Order**

14 27. On or about April 1, 2016, an interim suspension order was issued restricting  
15 Respondent from practicing medicine during the pendency of this action.

16 **May 2016 Conviction**

17 28. On or about May 18, 2016, in the Superior Court of the State of California, for the  
18 County of Riverside case number R1F1502537, entitled *People of the State of California vs.*  
19 *Benjamin Stuart Wilbur*, Respondent was convicted, upon his plea of guilty to a violation of  
20 Vehicle Code section 10851, subdivision (a), a misdemeanor.

21 29. Respondent was sentenced to summary probation for a period of 36 months, with  
22 terms and conditions which included, without limitation, payment of fines and restitution.

23 30. The circumstances surrounding Respondent's conviction are as follows:

24 31. On or about July 8, 2015, Respondent rented a black Ford Fusion (the "Rental Car")  
25 from Budget Auto Rental and was required to return the Rental Car to the rental agency on or  
26 about July 15, 2015. However, Respondent never returned the Rental Car to Budget Auto Rental.  
27 On or about September 24, 2015, at approximately 10:30 a.m., police officers had located the  
28 Rental Car in the parking lot of the courthouse located at 8303 Haven Avenue in Rancho

1 Cucamonga, California. Respondent was detained by police officers when he approached the  
2 Rental Car. He waived his Miranda rights and spoke to the officers at that time telling them that  
3 he rented the Rental Car and was required to return it on July 15, 2015. He stated that he did not  
4 return the car when it was due and assumed his credit card would be charged for the additional  
5 time. Respondent also said that while he did receive certified letters from Budget Auto Rental, he  
6 never opened them. He also stated that he was living out of the vehicle and motels due to his  
7 recent arrest and divorce. He also admitted to using methamphetamines. He later stated that he  
8 may have cancelled his credit card which was why Budget was not able to charge against it.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Dangerous Use of Alcohol and Self Use of Controlled Substance)**

11 32. Respondent is subject to disciplinary action under section 2239 of the Code, in that he  
12 used, prescribed, or administered to himself a controlled substance and/or alcoholic beverages, to  
13 the extent, or in such a manner as to be dangerous or injurious to himself, or to any other person  
14 or to the public, and/or to an extent that such use impaired his ability to practice medicine safely.  
15 The circumstances are as follows:

16 33. The allegations in paragraphs 14 through 31, inclusive above are incorporated herein  
17 by reference as if fully set forth.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Conviction of Substantially Related Crimes)**

20 34. Respondent is subject to disciplinary action under sections 2236 and 490, of the  
21 Code, in that he was convicted of offenses substantially related to the qualifications, functions, or  
22 duties of a physician and surgeon. The circumstances are as follows:

23 35. The allegations of the First Cause for Discipline are incorporated herein by reference  
24 as if fully set forth.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Violation of Drug Statute)**

27 36. Respondent is subject to disciplinary action under section 2238 of the Code and  
28 sections 11170 and 11370.1 of the Health and Safety Code in that Respondent administered a

1 controlled substance to himself and unlawfully possessed a controlled substance while armed  
2 with a firearm. The circumstances are as follows:

3 37. The allegations of the First and Second Causes for Discipline are incorporated herein  
4 by reference as if fully set forth.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Unable to Practice Safely Due to Mental Disorder)**

7 38. Respondent is subject to discipline pursuant to Business and Professions Code section  
8 822 in that his ability to practice medicine safely is impaired because he is mentally or physically  
9 ill in a manner affecting competency. The circumstances of Respondent's mental illness are as  
10 follows:

11 39. The allegations of the First, Second and Third Causes for Discipline are incorporated  
12 herein by reference as if fully set forth.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(General Unprofessional Conduct)**

15 40. Respondent is subject to disciplinary action under section 2234 of the Code,  
16 generally, in that he committed unprofessional conduct. The circumstances are as follows:

17 41. The allegations of the First, Second, Third and Fourth Causes for Discipline are  
18 incorporated herein by reference as if fully set forth.

19 ///

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Medical Board of California issue a decision:

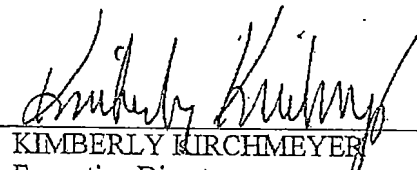
4 1. Revoking or suspending Physician's and Surgeon's Certificate Number A-92956,  
5 issued to Benjamin Stuart Wilbur, M.D.;

6 2. Revoking, suspending or denying approval of Benjamin Stuart Wilbur, M.D.'s  
7 authority to supervise physician assistants, pursuant to section 3527 of the Code;

8 3. Ordering Benjamin Stuart Wilbur, M.D. to pay the Medical Board of California, if  
9 placed on probation, the costs of probation monitoring; and

10 4. Taking such other and further action as deemed necessary and proper.

11  
12 DATED: \_\_\_\_\_

  
13 KIMBERLY KIRCHMEYER  
14 Executive Director  
15 Medical Board of California  
16 Department of Consumer Affairs  
17 State of California  
18 Complainant

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